Improved Program Delivery

Justice System

A Study Team Report
to the Task Force on Program Review

THE JUSTICE SYSTEM

A Study Team Report
to the Task Force
on Program Review

November 1985

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Available in Canada through

Authorized Bookstore Agents
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or by mail from

Canadian Government Publishing Centre
Supply and Services Canada
Ottawa, Canada K1A 0S9

Catalogue No. CP32-50/19-1985E Canada: $25.00
ISBN 0-660-11989-7 Other Countries: $30.00

Price subject to change without notice

CONTENTS

FOREWORD i

TERMS OF REFERENCE 1

LIST OF TEAM MEMBERS 7

OVERVIEW 11

RESEARCH GRANTS AND CONTRIBUTIONS

- The Coordination of Research, Development and Policy Development 25
- Criminal Law Reform Fund 34
- Human Rights Law Fund 43
- Special Project - Legal Aid 50
- Grant to the Canadian Law Information Council 56
- Duff-Rinfret Scholarships 63
- Consultation and Development Fund 67
- Grant to the Canadian Institute of Resource Law 72
- Grant to the Hague Academy of International Law 74
- Grant to the British Institute of International and Comparative Law 76
- Grant to the International Commission of Jurists 79
- Research Grant - Uniform Law Conference of Canada 81
- Administrative Expenses - Uniform Law Conference of Canada 85
- Grant to Canadian Association of Provincial Court Judges 89
- Contribution to Canadian Society of Forensic Science 92
- Grant to Canadian Association of Chiefs of Police 94
- Summer Canada Student Employment Program 97
- Criminal Justice Research Program 98
- Demonstration Program 102
- Sustaining Contributions to Canadian Criminal Justice Research Centres 108
- Solicitor General's Fund for Independent Research 114
- Program Grants and Sustaining Contributions to National Voluntary Organizations Involved in Criminal Justice 119
- Employment Program 123
- Publications Program 126
- National Victims Resource Centre 129
- Ministry Library 133
- Consultation Centre Activities 138
- Human Rights Program 143
- Canadian Centre for Justice Statistics 147

JUSTICE PROGRAMS

Legal Services 153
Roles of the Departments of External Affairs and Justice in International Law 158
Human Rights and the Department of Justice 165
Department of Consumer and Corporate Affairs 168
Young Offenders Act 170
Court Challenges Program 177
Competition Policy Administration 179
Judges and Judges' Spouses and Children Salaries/Allowances/Gratuities 182
Administration - Federal Judicial Bodies 185
Language Training 188
Federal Court Reports 191
Central Divorce Registry 194
Legal Aid in Criminal Cases 198
Compensation for Victims of Violent Crimes 203
Law Reform Commission of Canada 208
Canadian Human Rights Commission 214
Public Legal Education and Information Program 221

LEGISLATIVE PROCESS

The Preparation of Legislation 225
Legislative Drafting Program 234
Civil Law/Common Law Exchange Program 238
Office of Regulatory Reform 244
Firearms Registration 249
Information Commissioner 256
Privacy Commissioner 261
Elections Canada 266
International Joint Commission 270
Political Contribution Tax Credit 274
Access to Information and Privacy Publications 280

CORRECTIONS

Overview 287
Correctional Investigator 290
Correctional Service of Canada 294
Split in Jurisdiction in Corrections 296
Privatization of Correctional Functions 301
Effective Staffing Model for CSC 307
Use of Part-time Employees 313
Federal/Provincial Responsibilities Under 16(1) Penitentiary Act 316
Earned Remission 319
Costs and Use of Incarceration 322

PAROLE

Overview 325
Conditional Release 329
Temporary Escorted or Unescorted Occasional Release 335
Day Parole 335
Full Parole 336
Mandatory Supervision 336
Pardon: Federal Offences 337
Federal Parole - Community Supervision 343

LAW ENFORCEMENT

Overview 349
Canadian Police Information Centre 352
Canadian Police College 356
RCMP Employee Information 361
Forensic Laboratory Services 363
Federal Law Enforcement 368
Police Services Under Contract 374
Identification Services 381
Publications, Displays, 384
Musical Ride and Band 387
Privatization Within the RCMP

EMERGENCY PLANNING

Overview 391
Emergency Planning Training and Education 397
Emergency Planning and Response Coordination 403
Research Fellowship Emergency Planning 411
Workers' Compensation Agreements 414
Joint Emergency Planning Program 418
Disaster Financial Assistance 425

RECORD OF CONSULTATION 431

FOREWORD

The Task Force on Program Review was created in September 1984 with two major objectives - better service to the public and improved management of government programs. Recognizing the desirability of involving the private sector in the work of program review, assistance from national labour, business and professional organizations was sought. The response was immediate and generous. Each of these national organizations selected one of their members to serve in an advisory capacity. These public spirited citizens served without remuneration. Thus was formed the Private Sector Advisory Committee which has been responsible for reviewing and examining all of the work of program review.

The specific program reviews have been carried out by mixed study teams composed of a balance of private sector and public sector specialists, including representatives from provincial and municipal governments. Each study team was responsible for the review of a "family" of programs and it is the reports of these study teams that are published in this series. These study team reports represent consensus, including that of the Private Sector Advisory Committee, but not necessarily unanimity among study team members, or members of the Private Sector Advisory Committee, in all respects.

The review is unique in Canadian history. Never before has there been such broad representation from outside government in such a wide-ranging examination of government programs. The release of the work of the mixed study teams is a public acknowledgement of their extraordinarily valuable contribution to this difficult task.

Study teams reviewed existing evaluations and other available analyses and consulted with many hundreds of people and organizations. The teams split into smaller groups and consulted with interested persons in the private sector. There were also discussions with program recipients, provincial and municipal governments at all levels, from officials to cabinet ministers. Twenty provincial officials including three deputy ministers were members of various study teams.

The observations and options presented in these reports were made by the study teams. Some are subjective. That was necessary and appropriate considering that the review phase of the process was designed to be completed in a little more than a year. Each study team was given three months to carry out its work and to report. The urgent need for better and more responsive government required a fresh analysis of broad scope within a reasonable time frame.

There were several distinct stages in the review process. Terms of reference were drawn up for each study team. Study team leaders and members were appointed with assistance from the Private Sector Advisory Committee and the two Task Force Advisors: Mr. Darcy McKeough and Dr. Peter Meyboom. Mr. McKeough, a business leader and former Ontario cabinet minister, provided private sector liaison while Dr. Meyboom, a senior Treasury Board official, was responsible for liaison with the public sector. The private sector members of the study teams served without remuneration save for a nominal per diem where labour representatives were involved.

After completing their work, the study teams discussed their reports with the Private Sector Advisory Committee. Subsequently, their findings were submitted to the Task Force led by the Deputy Prime Minister, the Honourable Erik Nielsen. The other members are the Honourable Michael Wilson, Minister of Finance, the Honourable John Crosbie, Minister of Justice, and the President of the Treasury Board, the Honourable Robert de Cotret.

The study team reports represent the first orderly step toward cabinet discussion. These reports outline options as seen by the respective study teams and present them in the form of recommendations to the Task Force for consideration. The reports of the study teams do not represent government policy nor are they decisions of the government. The reports provide the basis for discussion of the wide array of programs which exist throughout government. They provide government with a valuable tool in the decision-making process.

Taken together, these volumes illustrate the magnitude and character of the current array of government programs and present options either to change the nature of these programs or to improve their management. Some decisions were announced with the May budget speech, and some subsequently. As the Minister of Finance noted in the May budget speech, the time horizon for implementation of some measures is the end of the decade. Cabinet will judge the pace and extent of such change.

These study team reports are being released in the hope that they will help Canadians understand better the complexity of the issues involved and some of the optional solutions. They are also released with sincere acknowledgement to all of those who have given so generously of their time and talent to make this review possible.

TERMS OF REFERENCE

BACKGROUND

The Justice System review will include, for the most part, programs under the responsibility of the Minister of Justice, the Solicitor General and the Minister of Supply and Services.

The Minister of Justice is responsible for the Department of Justice. For 1985/86, the Department of Justice has a budget of $158 million and 1,389 person-years. The Minister of Justice performs two distinct functions. The Attorney General function includes legal advice to departments and agencies, the preparation of legislation and the conduct of litigation. The Minister of Justice function is concerned with policy considerations underlying the substantive law for which the minister is directly responsible. Other bodies account for $140 million and 551 person-years. The minister reports to Parliament for the Supreme Court of Canada, the Federal Court, the Tax Court, the Law Reform Commission, the Canadian Human Rights Commission and the Commissioner for Federal Judicial Affairs.

The Solicitor General is responsible for the Ministry of the Solicitor General with a budget of $1.8 billion and 31,172 person-years, exclusive of the Canadian Security Intelligence Service. The ministry secretariat has a budget of $187 million and 319 person-years. The RCMP has a budget of $828 million and 19,377 person-years. The Correctional Service of Canada has a budget of $795 million and 11,165 person-years and the National Parole Board has a budget of $14 million and 311 person-years. The Solicitor General has jurisdiction over penitentiaries, parole, pardons, federal law enforcement and national security. (The Canadian Security Intelligence Service reports to the Solicitor General but is not included in this review.)

The Minister of Supply and Services is responsible for the Canadian Centre for Justice Statistics of Statistics Canada. The Canadian Centre for Justice Statistics has 85 person-years and a budget of $4,469,400. The mandate of the Canadian Centre for Justice Statistics is to provide - within the direction of the Justice Information Committee - information to describe the substantive, procedural and administrative aspects of the federal, provincial and territorial justice systems through the presentation of useful data, and to support the development of information systems. The Justice Information Committee includes the federal, provincial and territorial deputy ministers responsible for justice.

TERMS OF REFERENCE

The Ministerial Task Force on Program Review seeks the advice and conclusions of the team regarding a profile of government programs with respect to the Justice System review which is simpler, more understandable and where decision making is decentralized as far as possible to those in direct contact with client groups. Included in this advice could be observations regarding:

- areas of duplication between federal and provincial governments taking note of federal and provincial jurisdiction;
- areas of duplication between departments and agencies of the federal government;
- programs that might be eliminated;
- programs that could be reduced in scope;
- groups of programs that could be consolidated;
- programs whose basic objective is sound but whose form should be changed;
- programs which could be, either in whole or in part, more efficiently and effectively delivered by private sector ogranizations;
- a summary overview of the legislation that would be required to implement any of these program changes;
- the resources implications of any recommended program changes, including increased costs or savings and increases or decreases in staff.

By means of background information to its conclusions the study team is asked to obtain answers to three sets of questions or concerns regarding beneficiaries, efficiency and overlap, and gaps and omissions.

BENEFICIARIES

The principal beneficiaries of the programs and how they use the services.

- Beneficiaries of federal programs who are also beneficiaries of provincial, territorial, municipal or private sector programs.

EFFICIENCY AND OVERLAP

- Programs which are particularly troublesome to beneficiaries in terms of red tape, paper work, and delays.

- Cases where programs could be delivered more efficiently at the provincial level or by private sector organizations.

- Cases where programs could be delivered by alternative means.

- Review of the respective policy and programs functions of the Department of Justice, and the Ministry of the Solicitor General and, with respect to human rights and international law in particular, review the respective roles of the Secretary of State, the Department of External Affairs and the Department of Consumer and Corporate Affairs.

- Review of existing consultation mechanisms and procedures with respect to federal/provincial initiatives.

- Review of provincial structures in the justice system with respect to the efficient delivery of the justice system programs.

- Rationalization of grants and contributions.

- Alternate resourcing strategies for the delivery of legal services to the federal government including:

  a. the merit of putting the Department of Justice on a cost-recovery basis in relation to client departments and agencies; and

  b. the possibility and desirability of establishing resource levels for legal services that focus more on client demands seen as an integral part of a client's overall resource priorities.

GAPS AND OMISSIONS

- Programs which should be taken into account in this review but are not in the list of programs assigned for review.

LINKAGE WITH OTHER STUDIES

Some programs are or will be subject to review by other study teams under the Ministerial Task Force. In order to avoid duplications the team will identify for the Ministerial Task Force issues or programs that have been reviewed by previous Task Force teams or are in the process of being reviewed by ministers through other means.

COMPOSITION OF STUDY TEAMS

The study team will be led by Mr. Nicholas d'Ombrain, Assistant Secretary to the Cabinet, Privy Council Office. The team director will report to both the Public Sector Adviser and the Private Sector Liaison Adviser serving the chairman of the Task Force. The director will be supported by nine seconded government officers and a matching number of private sector representatives nominated through the Private Sector Advisory Committee. The team, or its director, shall meet with the public sector and private sector liaison advisers at their request.

WORK PROGRAM

It will be desirable to assign specific tasks to sub-teams dealing with specific subjects. To this end, the study team will submit for consideration by the Ministerial Task Force a detailed work plan showing the sub-teams and the major activities.

The study team will have access to any evaluations and evaluative tools departments have with respect to programs covered by this review.

COMMUNICATION WITH DEPARTMENTS

Ministers of departments directly affected by this review will be advised which programs under their jurisdiction will be included.

REPORTING SCHEDULE

The study team is requested to report its findings to the Ministerial Task Force by November 28, 1985. In addition, the Task Force will receive brief progress reports on the work of the study team at regular meetings.

LIST OF THE PROGRAMS OF THE JUSTICE SYSTEM

DEPT.	PN	TITLE
CCA	105	CONSUMER & CORPORATE AFFAIRS COMPETITION
CHRC	1	CANADIAN HUMAN RIGHTS COMMISSION
CI	1	OFFICE OF THE CORRECTIONAL INVESTIGATOR
CSC	12	CORRECTIONAL SERVICE OF CANADA
ELC	1	ELECTIONS CANADA
EPC	1	EMERGENCY PLANNING COURSES
EPC	2	EMERGENCY PLANNING AND RESPONSE COORDINATION
EPC	3	RESEARCH FELLOWSHIPS IN EMERGENCY PLANNING
EPC	4	WORKMEN'S COMPENSATION AGREEMENT
EPC	5	DISASTER FINANCIAL ASSISTANCE ARRANGEMENT
EPC	6	JOINT EMERGENCY PLANNING PROGRAM
FIN-TEP	2	POLITICAL CONTRIBUTION TAX CREDIT
FJA	1	JUDGES & JUDGES SPOUSES & CHILDREN
FJA	2	ADMINISTRATION/FEDERAL JUDICIAL BODIES
FJA	3	LANGUAGE TRAINING COURSES
FJA	4	FEDERAL COURT REPORTS
ICC	1	INFORMATION COMMISSIONER - ACCESS TO INFORMATION
IJC	1	INTERNATIONAL JOINT COMMISSION
JUST	1	CENTRAL DIVORCE REGISTRY
JUST	3	CRIMINAL LAW REFORM FUND
JUST	4	HUMAN RIGHTS LAW FUND
JUST	6	SPECIAL PROJECT - LEGAL AID
JUST	7	CANADIAN LAW INFORMATION COUNCIL (CLIC)
JUST	14	DUFF-RINFRET SCHOLARSHIPS
JUST	15	LEGISLATIVE DRAFTING PROGRAM
JUST	17	CIVIL LAW/COMMON LAW - EXCHANGE PROGRAM
JUST	80	LEGAL AID IN CRIMINAL CASES
JUST	90	COMPENSATION FOR VICTIMS OF VIOLENT CRIME
JUST	200	CONSULTATION AND DEVELOPMENT FUND
JUST	201	GRANT: CANADIAN INSTITUTE OF RESOURCES
JUST	202	GRANT TO HAGUE ACADEMY
JUST	203	GRANT: BRITISH INSTITUTE
JUST	204	GRANTS: INTERNATIONAL COMMISSION OF JURISTS
JUST	205	RESEARCH GRANTS - UNIFORM LAW CONFERENCE
JUST	206	ADMINISTRATIVE EXPENSES - UNIFORM LAW CONF
JUST	207	CANADIAN ASSOCIATION OF PROVINCIAL COURT JUDGES
JUST	208	CANADIAN SOCIETY OF FORENSIC SCIENCE
JUST	209	CANADIAN ASSOCIATION OF CHIEFS OF POLICE

LIST OF THE PROGRAMS OF THE JUSTICE SYSTEM (Cont'd)

DEPT.	PN	TITLE
JUST	210	SUMMER CANADA/STUDENT EMPLOYMENT PROGRAM
LRC	1	LAW REFORM COMMISSION
NPB	2	TEMPORARY ABSENCES (OCCASIONAL RELEASE)
NPB	3	DAY PAROLE
NBP	4	PARDON/FEDERAL OFFENCES
NBP	5	FULL PAROLE
NPB	6	MANDATORY SUPERVISION
PCC	3	PERSONAL INFORMATION/SUPERVISION & PRIVACY
RCMP	2	CANADIAN POLICE INFORMATION CENTRE
RCMP	4	FIREARMS REGISTRATION
RCMP	7	POLICE TRAINING - CANADIAN POLICE COLLEGE
RCMP	8	PUBLICATIONS, DISPLAYS, MUSICAL RIDE
RCMP	9	RCMP EMPLOYEE INFORMATION
RCMP	10	LABORATORY SERVICES
RCMP	100	FEDERAL LAW ENFORCEMENT
RCMP	101	POLICE SERVICES UNDER CONTRACT
RCMP	102	INDENTIFICATION SERVICES
SGC	1	FUNDING PROGRAMS
SGC	2	DEMONSTRATION PROGRAM
SGC	3	FUNDING SUSTAINING CONTRIBUTION PROGRAM
SGC	4	GRANTS PROGRAM
SGC	6	UNSOLICITED RESEARCH FUND
SGC	7	STUDENT EMPLOYMENT PROGRAMS
SGC	8	PUBLICATIONS PROGRAM
SGC	9	VICTIM RESOURCE CENTRE
SGC	10	LIBRARY, DOCUMENTATION CENTRE PULBICATION
SGC	900	CONSULTATION CENTRE ACTIVITIES
SGC	901	YOUNG OFFENDERS DIVISION ACTIVITIES
SS	6	HUMAN RIGHTS
TB	6	OFFICE OF REGULATORY REFORM
SS	51	COURT CHALLENGES PROGRAM
		FEDERAL/PROVINCIAL RESPONSIBILITIES UNDER 16(1) PENITENTIARY ACT

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OVERVIEW

INTRODUCTION

The justice system in Canada today is at a turning point. The role played by the federal government is pivotal to the system as a whole. The quality of justice will become an increasingly important public issue in the years to come as rapid social and economic changes increasingly call into question the principle of equity and how it can be respected given the realities of finite resources and the rapidly growing tendency to substitute judicial for political authority. The consequence of these trends, the study team believes, will be to focus national concern on the federal government's response to an emerging institutional crisis. Decisions by ministers at the federal level flowing from the work of the Ministerial Task Force could have the effect of consolidating significant progress made in the justice system over the past 15 years and determine the way in which the system will work between now and the year 2000. This requires a careful consideration of the principles that guide the federal government's role in the justice system, its institutional arrangements for giving effect to that role and the importance of taking adequate account of finding means to work cooperatively with the provinces in fulfilling their responsibility for the administration of justice. Fiscal restraint at both levels of government provides an opportunity to deal with basic issues because it places a premium on the most efficient way of fulfilling operational responsibilities.

A TURNING POINT

The justice system is at a turning point for a wide variety of reasons. Principally these have to do with the stresses inherent in operating overburdened, costly institutions in times of restraint, and the advances that have been made in making the law and the institutions that give effect to it more reflective of the principle of social equity.

The past two decades have witnessed a number of significant changes in attitudes towards the relationship between law and society. Law is used much more than as a means of regulating the relationship of individuals to one another and to society as a whole. It is, of course, used for these purposes, but since the passage of the Bill of Rights at the beginning of the 1960s the law has come to be used increasingly as an instrument of collective social equity. This trend has been accompanied by an increasing tendency to use the law and its procedures and methods of decision-making as a means of satisfying societal demands that were either new or, in another era, would have been dealt with through political institutions. Thus, for example, in Access to Information legislation, judicial decision-making has been substituted for ministerial responsibility. These trends have come together in the Charter of Rights which, with its constitutional status, ensures that the need to think about the broad social significance of the law and the way in which the justice system gives effect to it in society will continue to claim more and more attention from all the institutions of justice, public and private. It is also worth noting in this context that the information society is promoting rapid social changes that are already straining the capacity of the legal system as a whole, and to which it must respond effectively if law is to remain the basis of social conduct.

IS JUSTICE A SYSTEM?

Justice in Canada is administered and operated by a range of public and private institutions operating at both levels of government. Together they provide a structure dedicated to providing justice to Canadians. The linkages within the structure are, however, of a somewhat tenuous character. Indeed, the adversarial, individualistic and discretionary character of the legal profession might at times be thought to insinuate itself into the disjointed relationships of the institutions, public and private, that compose the structure of the system.

In the view of the study team, there are, in addition to the weaknesses of linkages within the structure, two important related issues that should be noted. The first has to do with the extent to which the participants in the system as a whole are interested in, or capable of, viewing their interaction in systemic terms. The common law tradition discourages systemic rationalization, and this appears to have extended to not thinking about why relationships within the system are as they are, or how they could be improved. The second related issue is that historically there has been very little empirical data about what is actually happening within the justice system. This absence of information is gradually being corrected, but it still remains largely the case that the absence of an academic tradition has made it difficult to adapt the law to meet modern social conditions on the basis of a clear understanding of how the law is actually applied and what may result from changes in it.

In short, there is a system, but it is housed within a structure whose members are often unable to benefit from strong interrelationships. This is because there is no tradition of doing so, nor is there a generally held perception that more systemic thinking and better information about how one part of the structure affects others would be helpful.

TAKING STOCK OF HOW THE JUSTICE SYSTEM IS EVOLVING

The complexity of the justice system is daunting and getting more so as more law, and more complex law, is enacted. Taking stock implies an attempt to look at the system systemically which, as noted, is not how the participants of the system tend to see themselves or each other. It is not surprising, therefore, to discover that a number of notable advances have been made in a more or less isolated manner in or among particular components of the sector. These advances, particularly in policy support for the development of the law, in elaborating the theoretical framework for the administration of justice and collecting data on what is actually happening in the system, have institutional bases in governments, law reform commissions, private foundations and the universities.

Fifteen years ago, policy development in support of the law was essentially non-existent. At the federal level, the first moves in this direction were made in the early 1970s when the Department of Justice began to consult individual law professors, although in those days few law professors were professionally trained researchers. The establishment of the Law Reform Commission gave these early stirrings some institutional permanence. The Department of Justice remained, however, the domain of litigators and solicitors until well into the mid-70s, although to its credit the policy void within the government was partially filled by the Solicitor General's departmental secretariat. Today, however, these early efforts to broaden the scope of the law-making function to encompass the examination of the policy for law in all its aspects have grown into the extensive activities of the Law Reform Commission, the Department of Justice, and the Solicitor General's departmental secretariat.

Fifteen years ago Canada's law schools were not much engaged in research activities. Faculty members were not professionally trained to conduct research, and there was little interest in the schools in developing joint programs with professional researchers in disciplines such as sociology, criminology, political science, history, economics, and so on. Today Canada's faculties of law are different places, endeavouring not only to educate future professionals, but to promote scholarship and give future practitioners a framework within which to think about the increasingly important role of law as an instrument of social and political change.

During the same period both levels of government have become more active in finding means to give effect to the principle of equality before the law and the related social values of rehabilitation and crime prevention. The federal government has funded a very significant portion of legal aid programs; assisted Native peoples to understand the law and its procedures; developed crime prevention programs; developed pilot programs designed to provide assistance to victims of crime; and, taken other similar initiatives. Legal aid in particular has profoundly changed access to the law in the justice system. Some of these initiatives have caused certain problems with the provinces, principally because of the significant costs involved, but their cumulative effect has been to humanize justice and make its administration more just.

However, in the view of the study team, these developments are lacking in strategic focus. They cannot be said to fit into any clearly understood management system that seeks to coordinate all these good things in order to arrive at the shared objective of better justice in a rational manner. The truth of this is apparent in the state of federal/provincial tension in the justice sector, in the lack of focus and coordination within and among federal institutions in the justice sector and in the fact that the courts do not appear to have made any significant advances in the execution of their business or their relationship with the rest of the sector over the past 25 years. This is not to suggest that management theory or standardization offer some magic solution, but that current efforts to understand the justice system would benefit from a strategic sense of direction. It must also be noted that the agendas of governments have changed since the early 1970s. The emphasis has shifted from "leading edge" developmental work to more operationally oriented fundamentals. The justice system needs to evaluate its developmental activities in the light of this overall change in emphasis, in the view of the study team.

FEDERAL/PROVINCIAL RELATIONS - A NEED TO SHARE MORE

The shared constitutional jurisdiction has made for difficult relations in the justice sector. There is currently, however, a tangible spirit on both sides to seek practical rather than jurisdictional solutions to problems. The opportunity to make progress on this basis should not be allowed to slip by, in the study team's view. It is inevitable that there will be tensions in an arrangement where the federal government legislates, as for criminal law, and the provinces pay for its administration. This odd split calls for special arrangements that respect both the law-making role of the federal government and the administrative duties and practical experience of the provinces. The work of the study team suggests that more program delivery functions could be passed to the provinces, particularly in the area of federal correctional institutions including penitentiaries, conditional release supervision and the Parole Board. The study team has proposed transferring all such matters to provinces which wish to assume the responsibility.

In this regard, the government may wish to consider whether an appropriate principle to guide such an evolution would be for the provinces to have primary responsibility for persons whose sentences are served in the community or in institutions whose linkages to community services are of primary importance, and for the federal government to be responsible for correctional and parole services for people judged to be a physical threat to society where security considerations would be uppermost. It should be noted, however, that the use of such a principle might best be used to guide ad hoc sharing arrangements rather than seeking to formally establish a new system of divided jurisdictions that might create as many problems as it solves and risks the elaboration rather than the reduction of administrative structures.

The team has also proposed that, to the extent possible, services should be privatized in whole or in part. It is for consideration, however, that privatization of correctional and parole services ought to be pursued to the fullest extent compatible with the Crown's responsibility to be fully and directly accountable for the use of coercive force in respect of persons whose liberty has been curtailed.

With respect to criminal law policy development, the study team has noted the need to improve relations between the two levels of government. It has noted this particularly in the case of demonstration projects mounted by the federal government in support of particular aspects of the criminal justice system, such as crime prevention and aid to victims. The team has suggested means to improve the delivery of these programs. The government may, however, wish to consider whether the federal/provincial relationship in this area is sufficiently important to warrant a further effort to make the broad inter-governmental consultation process more effective.

The two main mechanisms for coordination in this sector are continuing committees of ministers and deputy ministers respectively. The federal government may wish to consider providing the federal/provincial committee of deputies with a full-time executive secretary whose task would be to ensure that all relevant policy issues and important proposed research and demonstration projects were adequately communicated to and discussed with the deputies. The role would not be to reduce the scope for independent action at either level of government, but to ensure an adequate flow of useful information in a format that would be conducive to enhance the usefulness of debate among the deputies.

Over time, a successful executive secretary could provide leadership and direction to the Canadian Centre for Justice Statistics, which is a national body that reports to the continuing committee of deputies. The centre was created to develop national statistics on what is happening in the justice system. The study team has strongly endorsed strengthening this initiative. This and other means that could foster a more national approach to criminal justice policy issues should, in the view of the study team, be encouraged.

The study team considered the creation of a fully staffed national secretariat to serve the committee of deputies, but on balance concluded that this would achieve nothing more than adding another layer of bureaucracy. As regards demonstration projects generally, every effort should be made to secure provincial approval and participation and, if this is not forthcoming, a decision to proceed unilaterally should require the personal approval of the federal minister responsible. In addition, such developmental projects should take into account operational realities including the capacity of the justice system to assume new long-term program costs.

THE FUTURE FEDERAL ROLE IN THE JUSTICE SYSTEM

The Minister of Justice (who is also the Attorney General of Canada) is seen as the key national figure in the overall justice system in Canada. It is worthwhile remembering that the system is composed of more than the two levels of government; it includes universities, national voluntary organizations, private foundations that fund research and development, the profession itself with its governing bodies and associations, municipal governments, and, of course, the courts. A rationally oriented strategy for the whole justice system should take into account this broader constituency.

If the federal government is to be fully effective in the development of the justice system, it must ensure that it focuses on how best to fulfil its role in such a way that it satisfies its operational responsibilities, provides an effective overall framework within which the justice system operates and develops, and is sensitive to the responsibilities of the provinces. In this context, there is a need to clearly define federal responsibilities for the provision of national services in the area of policing as part of the operational requirement to define the federal (i.e. non-contract) role of the RCMP.

INSTITUTIONAL ARRANGEMENTS

The study team has addressed the issue of institutional arrangements to fulfil these federal responsibilities, particularly as between the Department of Justice and the Solicitor General's departmental secretariat. In the view of the study team, the existing arrangements have not optimized strategic policy development at the federal level. The team was unable to support a conclusion that the existing shared jurisdiction in criminal justice policy development between the two departments should be eliminated through a realignment of ministerial responsibilities, notwithstanding that the effect of the existing arrangement is regarded as confusing by many outsiders, including most of the provinces.

In looking at the question of the future federal role, it is important that the federal government is promoting research and policy development which will strengthen the framework within which the justice system operates. There should be particular emphasis on activities that will develop theoretical and empirical bases for such fundamentals as the nature of police independence, prosecutorial discretion, self-governance of the bar, the relationship between law schools and the bar and the nature of judicial independence, to name just a few. These and other systemic issues appear to be largely ignored inside government, although the universities and foundations are now beginning to turn their attention to them. Research on more time-sensitive topics such as aid to victims must of course carry on, but it should not overshadow attention to these essential matters, in the study team's view. Equally, the federal government should ensure that its operational responsibilities for law enforcement, prosecution, and corrections and parole are supported in its research programs.

As to structure, the study team has proposed that the Law Reform Commission be subject to greater direction in its work. The commission should not be asked to undertake major drafting projects. The commission should, the study team suggests, sponsor basic research on the sorts of fundamental issues outlined above and any other specific matter referred to it by the Minister of Justice.

The commission should also endeavour to make the fullest use possible of qualified academics in the law and social sciences faculties, making use of joint teams whenever possible. It should have adequate professional staff to design and evaluate research projects, but in most cases it should not conduct them in-house.

As for the departments of Justice and Solicitor General, the arguments advanced by the study team for and against consolidating criminal justice policy development in the Department of Justice need to be considered carefully. In this regard the team considered several options including concentrating all criminal justice policy in the Department of Justice, the designation of the Ministry of the Solicitor General as a Criminal Justice Ministry, combining all Justice and Solicitor General functions in a single department with or without a senior/junior ministers arrangement and simply using better coordinating machinery between the two existing departments.

An initiative to consolidate the criminal justice policy development function in the Department of Justice should, the study team believes, remove the confusion and some of the poor coordination in dealing with the provinces. It could result in focusing the Solicitor General's departmental secretariat on policy issues relating to the minister's four agencies, including broad policy issues touching such matters as alternatives to incarceration and the future law enforcement role of the RCMP. It would eliminate the perceived conflict in the minister's responsibility for the agencies as well as for the development of the justice system policy that the agencies are required to administer. Finally, it should obviate any perceived problem in having the Solicitor General develop policy for criminal law when the Minister of Justice is responsible for the criminal law.

The risk in concentrating all criminal justice policy development in the Department of Justice is that such development might be too much legally and not enough socially oriented; that the Solicitor General would be less able to temper the enforcement attitudes of the agencies; and, that the checks inherent in the existing system would be lost. In this regard, however, the Solicitor General's departmental secretariat developed its criminal law policy functions in the early to mid 1970s largely because the Department of Justice had shown no interest in doing so. That situation has now changed.

The new situation clearly involves two departments working in the same policy sector. This overlap creates confusion for outsiders, including the provinces, and rivalry between the two departments. The continuation of overlap, confusion, and rivalry should be weighed against whatever advantages the status quo appears to hold.

PRIVATE SECTOR

Regardless of which structural arrangement is adopted, the study tam believes that efforts should be made to make more and sustained use of the private sector in research and consultation. The capacity of the law and social sciences faculties to contribute to operationally relevant basic theoretical and empirical research should be systematically encouraged and existing funding redirected to ensure that such work is developed on a coherent basis. A representative group drawn from the law and social sciences faculties, voluntary organizations and the foundations may be a useful group with which to consult on a regular basis. The foundations are funding relevant theoretical and empirical work about which the government appears to be largely unaware. Such consultations and any consequent re-directing of research and development funds should serve both to improve linkages in the system and to ensure the development of a more systematic approach to justice issues. More generally, a redirection of funds towards more systematic research would reduce the scope for provincial irritants. In this regard, research and development funding, including existing sustaining grants to develop centres of excellence in the universities, might be usefully pooled and administered by the Social Sciences and Humanities Research Council. The SSHRC should then be invited to establish a separate funding category for justice issues into which the Law Reform Commission and the government should have adequate input.

THE COURTS

In the study team's view, better use of private sector resources would enable more work to be done on the role of the courts and issues of management and substance which at the present time are largely ignored because of the principle of judicial independence. It is essential that better means be developed to gather the views and opinions of judges and to influence the management of the courts.

CONCLUSION

In the view of the study team, the increasing use of the law to deal with social issues culminating in the political decision-making for the courts inherent in the Charter lends urgency to defining better the federal interest in the systematic understanding of the workings of the justice system and how best to give effect to it. Together with the profession and the non-governmental components of the sector, including the law and social sciences university faculties, the federal government should ensure that its research and development funds are being used first to develop a better base for understanding issues within the justice system and, in the process, to build better linkages among all those involved in the enforcement of the law, its application in the courts and the remedial consequences in the community and the prison/penitentiary system. This requires close attention to and research support for the operational responsibilities of the Department of Justice and the Ministry of the Solicitor General. Priority consideration of other policy issues such as crime prevention and assistance to victims should, in the study team's view, flow from this fundamental research base rather than precede it. In order to ensure that the orientation of the research base is adequate, the government may wish to consider formal substantive consultative mechanisms linking the federal apparatus to the non-governmental elements of the sector.

On the basis of this justice system base-building orientation, consideration would need to be given to streamlining the respective functions of the two federal departments and the Law Reform Commission. The commission could retain its broadly based systems-wide approach, but use a coordinated legal scholar and social scientist research thrust based primarily in the universities, working in cooperation with private foundations and voluntary organizations. Within these parameters it could then be subjected to more active ministerial direction. The Department of Justice should ensure that its policy activities directly complement the development of relevant research sponsored by the commission and carried out by the universities and foundations, ensuring that other policy development work does not overshadow this fundamental base-building research function. Regardless of whether the government believes criminal justice policy development should be rationalized in the Department of Justice, the Solicitor General's ministry secretariat should, in the view of the study team, focus itself more directly on the provision of independent advice to its minister concerning the policies governing the operations of his agencies, following the advisory model set out for the Deputy Solicitor General in the Canadian Security Intelligence Act.

Finally, based on the foregoing relationships with the provinces in this sector of shared jurisdictions, the study team believes emphasis should be placed on a more cooperative, fact-based footing. Services wherever possible could be shared, and every effort made to develop new criminal law on a cooperative basis, tying consultation to criteria such as jointly developed costing data and providing for the joint development of demonstration projects. In this regard some very modest machinery on the lines suggested above might be elaborated to assist the continuing federal/provincial committee of deputies to organize their work more effectively.

The development of:

a. an overall approach to the justice sector based on the federal interest in promoting more institutionally and empirically oriented research and policy development designed to support operational requirements and to foster better linkages within the justice system, and

b. greater cooperation with the provinces by sharing more operational services and developing a more national approach to criminal justice policy development

provide two broad guiding principles that may enable the federal government to chart its course and guide its strategic thinking in the justice sector in the critically difficult period that lies ahead.

OTHER KEY ISSUES

International Law

The Department of External Affairs provides its own legal and related services in matters of international law, giving rise to periodic disputes with the Department of Justice particularly in respect of litigation before the International Court of Justice. The study team has identified the arguments for and against consolidating international law issues in Justice and is of the view that the existing arrangements are unsatisfactory. In considering the merits of change, it is important to bear in mind the essentially political character of international law and the continuum that extends between diplomatic negotiations and international litigation. It is also worth noting that in certain areas of international law key to Canada's interests, particularly in law of the sea, the Department of External Affairs has developed an expertise second to none. In the view of the study team, more involvement on the part of Justice Department litigators should be encouraged but a decision to redefine ministerial responsibility in this area might best be taken only if further practical experience dictates a need for change.

Legislative Drafting

At present, legislative drafting is performed by a unit located in the Department of Justice. Drafting priorities are set by Cabinet on the advice of the Cabinet Committee on Legislation and House Planning, which is chaired by the Government's House Leader and serviced by the Assistant Secretary to the Cabinet for Legislation and House Planning. The study team has identified a number of problems that affect the dispatch with which the drafting function is performed and has advanced the possibility of relocating the function to place it directly under the control of the Government's House Leader. The team has suggested, however, that before considering a major reorganization that has significant implications not only for the Department of Justice but also for the role and structure of the Privy Council Office and the responsibilities of the Prime Minister, consideration be given to management improvements in the existing arrangements. This suggestion is based on the view that organizational change alone seldom solves management problems.

Emergency Planning Arrangements

Emergency planning arrangements have been examined by the study team. Quite apart from questions of expenditure levels, priorities, and federal/provincial jurisdictional issues, the team has been struck by the absence of a clear distinction between locally manageable and national disasters. In this regard, priority needs to be given to developing provincially agreed-upon listings of possible disasters and all available resources should be identified. Questions of jurisdiction and control could be addressed separately to the extent possible in order not to retard the development of basic contingency planning that identifies the optimal use of all resources. In order to make such progress, the federal government must be in a position to coherently manage the resources available to it in the context of an overall emergency planning strategy.

RESEARCH GRANTS AND CONTRIBUTIONS
THE COORDINATION OF RESEARCH, DEVELOPMENT AND POLICY DEVELOPMENT

SHARED JURISDICTION

The constitutionally defined regime of federal and provincial responsibilities for the justice system has led to the development of a complex arrangement of split and shared responsibilities among the 13 senior governments in Canada. The federal government has constitutional responsibility for criminal law and procedures, penitentiaries, certain aspects of policing, the prosecution of federal offences, the appointment of superior court judiciary and various other functions of criminal and civil justice. The provinces have responsibility for the administration of justice. The structure of the justice system is further complicated within many jurisdictions by the existence of more than one department having responsibility for aspects of the justice system. There are, within Canada, approximately two dozen departments having justice-related responsibilities, as well as many other federal agencies, such as Health and Welfare Canada, Department of Indian Affairs and Northern Development, Statistics Canada and provincial social services departments, which have less direct but substantive interest in issues related to the justice system. At the federal level, the two departments with the most direct responsibility for justice-related issues are the Department of Justice and the Ministry of the Solicitor General.

Not surprisingly, each of the players interact with differing priorities, differing levels of resources and differing capacities to jointly and individually manage their responsibilities. There is a consensus that the justice system in Canada can be characterized as fragmented and, indeed, there are some who would argue that it is misleading to characterize it as a system at all, except insofar as the activities of any one component affect the others.

Given the need for interaction in order to discharge responsibilities, there has emerged at the national level a highly complex mechanism for federal/provincial and interdepartmental consultation. In terms of federal/provincial relations, there currently exist at least a dozen committees of an ongoing or ad hoc nature, ranging from the ministerial to the staff level. Within the federal government, the necessity of inter-departmental coordination of efforts in areas of mutual interest has also necessitated the establishment of extensive committee and consultative structures. The complexity of the interaction and the degree of shared responsibilities for activities in the research and development and policy formulation areas is particularly pronounced.

Both of the aforementioned federal departments have mandates which require them to undertake similar kinds of research, development and policy formulation in order to adequately discharge their responsibilities. Section 4(c) of the Department of Justice Act provides general authority to that department to "have the superintendence of all matters connected with the administration of justice in Canada, not within the jurisdiction of the governments of the provinces". In addition, the Department of Justice has overall responsibility for the criminal code. The recognition that the justice and legal systems do not operate in isolation from social and economic factors; that the department's legislative responsibilities cannot be discharged without an empirical research capacity; and, that experimentation and consultation are critical to the discharge of its responsibilities, has led the department to establish such capacities over the last decade.

The legislated mandate of the Ministry of the Solicitor General, on the surface, gives that ministry a narrower responsibility for R&D, limited for the most part to operational research to support its statutorally defined functions relating to the agencies. The ministry was established in 1966 and the responsibilities for the RCMP, security matters, Correctional Service of Canada and the National Parole Board were removed from the Department of Justice.

In 1972, Treasury Board approved the establishment of a secretariat within the ministry, with responsibility for the development of policy, evaluation, research and consultative capacities to serve the minister in relation to the above-mentioned agencies and the broader criminal justice system. The ministry was given the administrative responsibility to play the lead role in major aspects of criminal justice policy. The capacity which has developed is focused primarily in the law enforcement and correctional sectors, although increasingly, substantive issues such as victims and sentencing, as well as the young offenders legislation, which cut across all sectors of the system, are being addressed.

In effect, both departments have a lead role in the area of criminal justice policy.

ENVIRONMENT

The study team, in assessing the environment in which the criminal justice system operates, advances the following characterization:

a. The constitutionally, legislatively and administratively defined mandates of the federal and provincial departments involved in the administration of justice have resulted in a highly complex and fragmented system.

b. The consultative process established to manage this complex and fragmented system is itself complex and fragmented.

c. There exists little agreement as to the direction in which the system as a whole should go; that is, on the general lines of legislative policy and program development it would be desirable to pursue on a national basis.

d. The research and knowledge capacity to support such strategic direction is itself under-developed.

e. In part, as a consequence of the above, the capacity to manage the system and the interrelationships among components of the system is also under-developed.

Fundamental to the situation facing criminal justice practitioners and decision-makers is the absence of shared strategic policy at the federal and national levels.

LEADERSHIP ROLE

Virtually all knowledgeable respondents interviewed by the study team acknowledged that the federal government has and must play a leadership role in the criminal justice system by virtue of its law-making power and responsibility as the central government. The question emerges as to how that role can be discharged most effectively to ensure that optimal efficiency in the administration of justice is achieved, and to ensure that a strategy for the improvement of justice services and legal protection is developed, with full regard for the implications of the proposed changes on all components of the system.

Currently, the federal government exercises its leadership responsibilities in the following ways:

a. through the consultative procedures leading to legislative amendment of the criminal law and areas of civil law which affect provincial interests; and

b. by stimulating policy and procedural change with respect to the operations of various components of the justice system through:

    1. increasing public awareness of, access to and involvement in the justice system; and

    2. providing technical and financial assistance to provincial and non-government departments and agencies in order to allow them to undertake specific activities and operate specific programs.

Both federal departments, as well as Health and Welfare Canada, the Department of Indian Affairs and Northern Development, Secretary of State and Statistics Canada are involved in these activities to varying degrees.

It must be recognized that the federal role as an agent of change within the justice system conflicts with provincial priorities, capacities and levels of resources. It is, however, in the view of the study team, critical that such conflicts be minimized and that, to the extent possible, the needs of the two levels of government coincide.

CONCLUSIONS

On the basis of its review, the study team has concluded that:

a. there is a need for a strategic policy at both the federal and national levels in order to:

    1. reach consensus on the direction for future development of the justice system;

2. allow the development of a research capacity and knowledge base to support integrated policy development and management of the system; and

3. optimize the efficiency with which the system is administered.

b. the existing framework for discharging shared responsibilities at the federal and federal/provincial levels frequently results in inter-departmental and inter-governmental tensions. While some degree of tension is inevitable, improvements in these processes are required.

c. given the complexity, degree of fragmentation and absence of agreement on the direction for further development, it is impossible to determine whether optimal efficiency in the administration of justice is being achieved.

FEDERAL STRATEGIC POLICY

In the view of the study team, the present division of criminal justice policy responsibility between the Department of Justice and the Ministry of the Solicitor General has not facilitated cohesive strategic policy development at the federal level. While specific elements of such a policy, such as that represented by the criminal law review process do exist, that thrust is not tied to a clear direction in other areas of federal operational and policy responsibility or to an understanding of its implications for provincial operational and policy responsibilities. There is a need to develop a capacity to undertake the task of establishing an overall, long-term and integrated approach to developing criminal justice policy at the federal level as well as the research and development activities which would support it.

The study team considered a number of structural alternatives which could contribute to the establishment of an improved strategic policy thrust at the federal level. The implications of major structural or mandate changes in the two departments, changes which could contribute to an improved capacity for strategic policy development, however, were such that no consensus emerged on an alternative which was clearly preferable to the status quo, notwithstanding its limitations.

The Department of Justice could be given a specific lead role in criminal justice policy-making. This would entail the integration within Justice of resources currently devoted by the Solicitor General to long-term policy development and that ministry's concentration on the operations of the RCMP, CSIS, CSC and NPB. Such a move would focus responsibility for overall policy development in one department but would entail major and disruptive structural changes within both. Moreover, this alternative would distance the agencies which are the major expenders of federal justice funds from the long-term policy development capacity which currently exists in the Solicitor General secretariat.

An alternative approach is the designation of the Ministry of the Solicitor General as being responsible for criminal justice policy; in effect to be a "Criminal Justice Ministry". In this case, the Department of Justice would provide the legal services required for legislation as a result of Solicitor General policy development and carry out the responsibilities normally associated with the Office of the Attorney General. This alternative would likewise entail major disruptive structural change and would remove from the Department of Justice its traditional responsibility for criminal law amendment. Any further review of this or other alternatives would need to address the relationship between the Solicitor General's agencies and the Deputy Solicitor General in terms of the appropriate degree of accountability through him/her and his/her appropriate role in resource allocation within and among the agencies.

In some jurisdictions, a single ministry combines the responsibilities of Justice and Solicitor General. One approach examined by the study team would provide for such an arrangement with three deputy ministers: a Deputy Attorney General; a Deputy Solicitor General and a Deputy Minister responsible for justice policy, programs and research. Another possibility is a senior Minister of Justice coordinating the policy activities of junior colleagues responsible for Solicitor General and Attorney General functions. Given the size of the existing federal departments, either of these alternatives could lead to problems resulting from an over-extended span of control. It was also noted that prior to 1966, a single ministry did exist and that the Ministry of Solicitor General was established to separate the investigative and prosecutorial responsibilities of the Crown and because of the breadth of responsibilities for which a single minister was accountable.

In the view of the study team, each of these approaches presents advantages and disadvantages but that of the single ministry with deputies responsible for three areas - legal services, police and operations, policy - appears to be the most useful in obtaining integrated policy control. Nonetheless, none of the alternatives to the present Justice/Solicitor General structure presents sufficient benefits as to make it clearly preferable. Moreover, it is not clear to the study team that any of the alternatives would result in savings in staff or budget.

Maintenance of the status quo however, does not, in the view of the study team, remove the need for a federal strategic policy capacity in criminal justice nor does it imply inaction. Rather, any action would need to be carefully targeted to avoid major disruption but seek maximum collaboration and coordination of policy development. Thus Cabinet could direct both Justice and the Solicitor General to prepare jointly, for its consideration and periodic review, a criminal justice strategic policy plan with an administrative mechanism and resource reallocation.

The study team proposes that the Department of Justice and the secretariat of the Ministry of the Solicitor General be jointly subject to an external "A" base review in order to assist in defining an appropriate strategic planning capacity.

NATIONAL POLICY

Efforts to overcome the divided nature of the criminal justice system and bring some cohesion and direction have been ad hoc or issue-oriented using federal/provincial task forces or working groups. An overall perspective is attempted through the regular meetings of ministers and deputies responsible for justice. The arrangement of and logistics for these meetings devolve upon participants without an on-going secretariat or other support mechanism.

To facilitate the development of a more integrated, national approach to criminal justice policy, the study team examined the possibility of establishing a small, federal/provincial secretariat for the meetings of ministers and deputies. Such a body could provide the machinery to underpin the process of discussion and help focus information on issues, provide institutional memory and aid control and integration of the work of other committees, task forces and working groups.

While some members of the team saw definite advantages to the proposal, it was the view of others that a secretariat would add another bureaucratic element to an already complex environment. The existing mechanisms do achieve results in developing national approaches to specific initiatives in criminal justice and reflect the nature and operation of the Canadian federation. The complexity and number of committees, task forces or working groups can therefore be viewed as a "cost of doing business".

The team also examined the Canadian Centre for Justice Statistics as an experiment in federal/provincial coordination and cooperation in national endeavours. While providing promise in its particular area of concern (justice statistics), it is too early to tell whether the model has applicability in the broader context of the management of the system of R&D in general. The study team noted that notwithstanding a formal federal/provincial committee structure to direct the operations of the centre, the number of participants at the deputy and staff levels and the sporadic interest of deputies in the initiative has led to difficulties in focusing policy direction and ensuring proper accountability.

RESEARCH AND DEVELOPMENT CAPACITY

Criminal justice, as other areas, requires a sufficient body of knowledge and individuals able to provide the long-term intellectual basis for policy development. Such a research and development capacity has been built in the last 20 years in law and criminology through federal and provincial university support and direct federal aid to research. However, an integrated, inter-disciplinary research and development capacity for the criminal justice system as such, rather than parts of it related to particular fields, is still lacking in the study team's view.

Given the need to develop an ongoing and dynamic knowledge base for policy-makers and society to draw upon in criminal justice, and its own mandate as a federal granting agency, the Social Sciences and Humanities Research Council of Canada should implement a strategic research program in law and criminal justice. To enable greater coherence and targeting of funds, resources now expended by the Solicitor General under its programs of support for criminology centres and independent research could be transferred to SSHRC for the strategic program. The Solicitor General, Justice and provincial authorities would need to have policy input into the structure and orientation of the SSHRC program.

CONSULTATION

In the view of the study team, there is a need for improved consultation between provincial and federal authorities in the exercise of the federal criminal justice leadership role, most particularly in the funding of demonstration projects. While stimulus of innovation in areas such as victims' services or crime prevention is a legitimate federal activity and required for policy development, provincial jurisdictional and long-term cost concerns must be addressed.

The current Solicitor General Consultation Centre structure does not adequately facilitate inter-governmental liaison and communication and is, together with demonstration projects, often an irritant for provincial authorities. The present six regional offices now fulfilling a variety of roles could be replaced by a single senior officer in each provincial capital whose function would be communication and liaison. Although part of and reporting to the Solicitor General Ministry, officers would also serve Justice department needs.

At present, joint Solicitor General/provincial committees exist in Alberta and Quebec to coordinate priorities and project support. Such committees should, in the view of the study team, be established in each province and include Justice department representatives.

Federal funding of demonstration projects would take place through or with provincial authorities. However, the clear power of the federal government to fund projects directly would not be altered. The Solicitor General Demonstration Program would be administered from Ottawa rather than delivered through regional offices as is currently the case. Furthermore, to provide better client service, the project approval process at the headquarters level could be streamlined and specific budgetary allocations determined for each province.

CRIMINAL LAW REFORM FUND
Department of Justice

OBJECTIVES

The stated objective of the Criminal Law Reform Fund is "... to promote legislative and non-legislative reform of the criminal law by:

a. enabling discussion with and obtaining the assistance of outside authorities and experts in relation to legislative reform in specific areas of criminal law;

b. promoting and evaluating experimental projects to test the proposals for changing the criminal law;

c. promoting consultation upon and disseminating information about new approaches to problems in specific areas of the criminal law, involving both legislative and non-legislative proposals" (TB Minute 740125).

AUTHORITY

This is a non-statutory program operated by the federal Department of Justice. Authority for expenditures derives from the annual Appropriations Act.

BACKGROUND

The Criminal Law Reform Fund was established in 1976 to contribute to the review and reform of criminal law and procedures being undertaken by the Law Reform Commission and the Department of Justice. In the department's proposal to Treasury Board and the subsequent terms and conditions of the contribution program approved by the board, emphasis was placed on the importance of non-legislative procedural reform and the responsibility of the Department of Justice to consult broadly on the appropriateness of reforms proposed by the commission. The benefit of the product is to the department, rather than the commission as the commission has its own consultative mechanisms.

The fund was initially intended and remains a mechanism to finance:

a. the department's external consultative process with individuals and non-governmental agencies with respect to proposed amendments to criminal law and procedures;

b. experimental and demonstration projects intended to test the efficacy of proposed amendments or procedures; and

c. external research intended to contribute to substantive and procedural law reform.

In 1984/85, Cabinet approved the establishment of two subcomponents of the fund, the Victims Fund, established for the two-year period 1984/85 and 1985/86 and the Sentencing Fund, covering the 1984/85 to 1986/87 fiscal years. Both funds have adopted the same Treasury Board-approved terms and conditions as are used for the "general" fund. The Victims sub-component is administered by the projects officer with responsibility for the "general" fund, assisted by a term position. The Sentencing fund is administered by a chief and a projects officer within the same section. The purposes of the two sub-components are the same as those of the "general" fund, although their focus is more specific, being limited to projects relating to the federal government's victims and sentencing initiatives.

Priorities for contributions are established annually by the projects officer responsible for the Criminal Law Reform Fund in consultation with the head of the three major client groups of the fund: the Coordinator Criminal Law Review; the General Counsel, Criminal Law Policy and Amendments Section; and the General Counsel, Program Policy and Law Information Development, as well as with provincial and private sector organizations which have a long-standing involvement with the fund. Priorities are approved by the Program Assessment Committee, chaired by the Assistant Deputy Minister Policy Planning, and include the section heads identified above, as well as the Director, Research and Statistics; Director, Financial Services; Director, Communications and Public Affairs; Executive Assistant to the Assistant Deputy Minister, Public Law; two projects officers; and the Senior Consultant on Criminal Justice from the Consultation Centre, Ministry of the Solicitor General. On the basis of the priorities and anticipated requirements from the major client groups within the ministry, and anticipated projects, an operational work plan, including a budget allocation by client group, is also approved by the Program Assessment Committee.

For 1985/86, the "general" fund preliminary allocation by client group is as follows:

Criminal Law Review Section	7.2 per cent
Criminal Law Policy and Amendments Section	53.9 per cent
Program, Policy and Law Information Development Section	18.0 per cent
Provincial and Private Sector Organizations	15.6 per cent
Other new initiatives	5.4 per cent

Priorities for the victims component of the fund are also approved by the Program Assessment Committee. A departmental Justice Victims Working Group does play a formal role in the recommendation of priorities and review of project proposals. For 1985/86, the priorities arevictim impact statement, spousal assault, child sexual abuse, general victim-witness assistance for specific groups of victims, sexual offences, comprehensive victim assistance projects and legal information for victims.

Proposals for the grant funding of sentencing initiatives are reviewed by the branch's sentencing team and approved by the Project Assessment Committee. A Justice/Solicitor General Coordinating Committee meets on occasion to ensure that each department is aware of funding activities and that duplication and overlap is avoided. The priorities for funding were established by Cabinet when the fund was established. They are: fine option programs, community service order programs, and restitution programs, with special attention being given to Natives and victims. The three areas relate to proposed amendments to the criminal code which were contained in Bill C-19 which died on the order paper in 1984. Only the fine option amendment was carried forward into Bill C-18.

Program administrators are essentially reactive to proposals in the case of the general and the comprehensive victims funds, as they are over-subscribed annually. In 1984/85, 92 project proposals totalling approximately $3 million were received, with 23 being approved. The administrators for the sentencing sub-component on the other hand have, of necessity, taken a pro-active approach to soliciting program proposals. That fund has been undersubscribed in 1984/85 and the previous fiscal year.

The terms and conditions of the "general" Law Reform Fund have been adopted for the victim and sentencing components. While the priorities for funding vary among the three funds, the criteria for approval are the same: congruence with priorities, the credibility and background of the applicant, an assessment of the likelihood of project success, appropriateness of budget level and the degree and type of provincial support. In the case of proposals which meet preliminary screening criteria, the project officer negotiates with the sponsor to resolve deficiencies in the submission, negotiates with appropriate provincial contacts and other federal departments and prepares a standard form project summary and assessment for review and recommendation to the minister by the Project Assessment Committee.

Each province has identified a law reform coordinator with whom the projects officer clears all project proposals involving the coordinator's jurisdiction. Provinces, in effect, have a veto over the fund's proposed projects where there is provincial or joint federal/provincial responsibility for the subject area.

The fund does not provide for "core" or ongoing funding of programs or agencies and funds only unsolicited external research projects. Contribution agreements are utilized for all projects. Ministerial signature for all agreements is required, although the Assistant Deputy Minister, Policy Planning has the authority to approve increases to ministerially approved contributions up to a maximum of $2,500.

All projects are reviewed by the Research and Statistics section of the department to determine the type of reporting, monitoring or evaluative strategy appropriate to the project. All major demonstration projects are subject to a formal program evaluation conducted under the direction of that section. Prior to final payment of the contribution, financial claims are subject to a departmental audit in accordance with current Treasury Board circulars.

BENEFICIARIES

The beneficiaries of this program are:

a. the client sections of the Department of Justice in that they rely on the fund for external consultation regarding Criminal Code and procedural amendment;

b. individuals and organizations, both governmental and non-governmental, in that they are provided the opportunity to provide advice on proposed reform and to access funds for projects relating to criminal law and procedural reform; and

c. the public at large, to the extent that legislative and non-legislative criminal law reform is aided by the fund.

EXPENDITURES (\$000)

A Base	**83/84**	**84/85**	**85/86**
Salaries and Wages	50.7	53.4	55.4
O&M	6.8	10.0	10.0
Contributions	417.5	417.5	417.5
TOTAL	475.0	480.9	483.9
PYs	1.5	1.5	1.5

These figures exclude term person-years and the budget for victims and sentencing initiatives in 1984/85 and the contributions budget for work relating to the Badgley report in 1983/84. In 1984/85, $352,200 in contribution funds were provided for victims and $234,000 for sentencing.

OBSERVATIONS

The fund has not been subject to a formal evaluation, although the Bureau of Management Consultants (BMC) completed an "Evaluation Overview" of all "Thrust" (discretionary) funds in the Department in October, 1985. That overview identified some 22 evaluation and management questions and recommended that an "Evaluation Assessment" be undertaken. (An evaluation assessment is a further review prior to a full-scale evaluation of program effectiveness and efficiency.) The BMC report also recommended that the five major funds and their sub-funds be treated as one fund on the basis that management issues (unidentified) cut across all funds, client groups are unlikely to differentiate between funds and that "trade-offs between instruments" cut across funds.

The Ministry of the Solicitor General operates a contribution and demonstration fund with a 1985/86 budget of $2,614,000. Similarly, the Department of Health and Welfare operates demonstration programs which fund projects similar to some of those covered by the Law Reform Fund, particularly in relation to victims. As a consequence, the fund is involved with joint and "piggy-back" funding with the other federal departments.

None of the relevant departments identified duplication of effort as a problem, although there are admitted overlaps in assigned or assumed areas of responsibility in relation to demonstration funding in the administration of justice area and lack of agreement concerning which ministry should have primary responsibility for particular substantive areas, such as victims and sentencing.

Provincial and voluntary sector respondents expressed uncertainty concerning the appropriate department to approach with funding proposals. Provincial respondents generally expressed the opinion that the federal government should not fund projects relating to the administration of justice without prior approval of the province and some maintained that it should not fund any demonstration projects which were not exclusively within its jurisdiction.

In its assessment, Treasury Board Secretariat (TBS) commented:

> "How many independent assessments must be made of the development of a new Criminal Law for Canada? For example, the Law Reform Commission, which is an independent agency, is engaged in an Accelerated Criminal Code Review, costing over $10 million over five years. In addition, the Departments of Justice and Solicitor General are also involved in studies within the Accelerated Criminal Code Review at a total cost of $10 million over the same period."

In addition, in its assessment of other Justice grant and contribution programs, TBS recommended collapsing the programs to reduce their numbers and increase flexibility.

ASSESSMENT

With respect to the issue of the appearance of duplication or overlap between this and the Solicitor General funding sources, it appears to the study team that the existence of two sources for demonstration projects relating to the administration of justice does cause confusion in the provinces and the voluntary sector. There is no evidence of actual duplication of funding and efforts are made to re-direct inappropriately submitted proposals to the other department. The focus of this fund, residing as it does in the Justice ministry, is on criminal law and procedure. The focus of the Solicitor General programs, on the other hand, is on broader social and non-legal aspects of program delivery. In a number of instances projects are cost-shared with the Ministry of the Solicitor General, resulting in duplication of administrative requirements and, from the perspective of the Department of Justice, unnecessary delay in the other department's approval process. Because contribution program funds are not transferable between departments, one department cannot take full administrative responsibility on behalf of the federal government for jointly funded projects.

In the view of the study team, an additional problem for projects jointly funded with other sources is the department's audit requirement that final payment on a contribution agreement be conditional upon receipt of statements for the full expenditures of the project. This represents a disincentive to joint funding, particularly where the department's contribution is small relative to the total costs of the project. The use of relatively small contributions to encourage specific components of, for example, large conferences could potentially maximize the benefit to the department of consultation expenditures if joint funding were possible.

With respect to the larger issue of whether there should be more than one funding source at the federal level for demonstration projects, one can only conclude that as long as more than one department has a mandate in a particular program area; has research, experimentation and information needs in those areas; and as long as duplication of effort is avoided, programs are efficiently administered and produce useful product, there is no justification for structural changes to consolidate funding sources into one agency. The study team has concluded that:

a. the Department of Justice has clear legislated authority to undertake research, development and consultation in the light of its responsibility for the Criminal Code of Canada. The "general" fund and the victims and sentencing components were established to promote experimentation and consultation with respect to criminal law and procedural amendment.

b. in the absence of a formal evaluation of the effectiveness of the fund, it would appear that it does represent a useful and beneficial mechanism for consultation and program development in relation to criminal code amendments and as a mechanism to fund research in areas of general interest to criminal law amendment.

c. there is no evidence of duplication of effort between this fund and similar funds in other departments.

d. relative to similar funds in the Ministry of the Solicitor General, it would appear that this fund is effectively administered, although the audit requirements of the department may represent a disincentive to accessing the fund to cover small portions of a larger project.

The sentencing component of the fund has been under-subscribed during the first two years of its three-year approval period. This is due to a number of factors, principal among which is the fact that two of the three legislative initiatives, Community Service Orders and restitution, died with Bill C-19. Without the legislated base, and in the light of the high priority given programming in relation to the Young Offenders Act, provincial interest in pursuing funds from this source was less than what it might have been. In addition, delays in staffing the associated term positions have in turn delayed the process of developing proposals in cooperation with provincial and non-government agencies.

Cabinet approvals to continue the victims initiative after 1985/86 and the sentencing initiatives after 1986/87 are conditional upon an external evaluation of the programs.

In the study team's view, should the relationship between the Law Reform Commission and the Department of Justice change, the utility of the fund to the basic formative research which underlinesthe proposals for legislative reform may be enhanced.

OPTIONS

Discontinue the fund and eliminate the department's major source of discretionary funding with respect to criminal law reform.

However, the study team recommends to the Task Force that the government continue the operation of the fund, subject to the evaluations required by the Cabinet order establishing the victims and sentencing funds and the evaluation planned of the "general" fund.

HUMAN RIGHTS LAW FUND
Department of Justice

OBJECTIVE

The objectives of the fund are "to inform Canadians in general, and more specifically the legal public [about], and to promote developments in and enlarge the body of knowledge on Human Rights Law in Canada." (TB minute 783539). The terms and conditions of this fund stipulate that "the application of these contributions will be to provide funds for legal research, publications and legal seminars and conferences and innovative public legal education projects".

AUTHORITY

This a non-statutory program operated by the Department of Justice. Authority for expenditures derives from the annual Appropriations Act.

BACKGROUND

The program was established in 1982 to provide for contributions in the human rights law field during the fiscal years 1982/83, 1983/84 and 1984/85. During 1985/86, expenditure levels were reduced from $500,000 to $400,000 and continuation of the program was made conditional on an evaluation of the performance of the fund. A draft of the final evaluation report is currently under review by the department's Bureau of Evaluation and Internal Audit.

Proposals for projects are reviewed by a projects officer and analysts from the Human Rights Law Section. All funding decisions are made by the departmental Human Rights Law Fund Committee which meets every two months. The committee is chaired by the Assistant Deputy Minister, Public Law and includes the General Counsel, Human Rights Law; the General Counsel, Program Policy; the Director of Research; the Director of Programs and Projects Administration; Chief, Projects Management and Finance; and projects officer. That committee is also responsible for approving the funding priorities recommended by the human rights section and the projects officer.

Priorities identified for 1985/86 are international human rights, Canadian human-rights legislation in general, the Charter in general and sections 7 and 15 of the Charter.

During the current fiscal year the fund has been used extensively to support the preparation of briefs and submissions by major national asssociations and groups in response to the government's consultation paper on equality rights.

The existence of the fund is not widely advertised. In 1983/84 the deputy minister wrote to law faculties, human rights associations and organizations involved in public legal education. Since that time, the fund has relied on direct contact with agencies and individuals and word of mouth to promote utilization of monies. The fund has been over-subscribed since its inception. During 1984/85 there were 56 applications with 29 applications being approved for funding totalling $1.3 million.

Because of the nature of most of the funded projects -- relating as they do to conferences, publications and research -- only two have been subject to formal evaluation. All proposals, however, are reviewed by the Research and Statistics Section.

The Secretary of State operates a similar fund which provides grants to organizations, institutions and groups involved in human rights activities.

In 1984/85, the approximate percentage distribution of contribution funds among major priority areas was as follows:

Human Rights Legislation General (including International)	24.5 per cent
Charter of Rights General	11.0 per cent
Section 15 and other Specific Sections	64.4 per cent

BENEFICIARIES

The major beneficiaries of the fund are the Department of Justice in that the fund provides a vehicle for consultation with knowledgeable groups and individuals; the Canadian legal community, to which the funds are primarily directed; and the public at large in relation to the public legal education component of the fund.

EXPENDITURES ($000)

	83/84	84/85	85/86
Salaries & Wages	50.7	53.4	56.0
Other O & M	0.3	0.6	0.6
Contributions[1]	433.5	496.0	400.0
TOTAL	484.5	561.5	462.0
PYs*	1.5	1.5	1.5

* The fund was reduced by $100,000 in fiscal 1985/86 in response to direction to reduce growth in government spending.

OBSERVATIONS

The department's Bureau of Evaluation and Internal Audit has concluded that there was no overlap in logic or design of the Human Rights Law Fund and other programs of the Department of Justice or the Secretary of State. The Secretary of State's fund is concerned with the broader social, political and cultural aspects of human rights, while the Justice fund focuses on the legal aspects. Where public legal education or conference projects relate to both areas of interest, joint funding may be undertaken. In 1984/85, there were two projects jointly funded by the two departments.

The major conclusions of the Bureau of Evaluation and Internal Audit are:

a. the fund has been very successful in improving the number and quality of human rights publications in Canada;

b. overall the fund has been an important agent in stimulating activity in the human rights field, both through promoting publication activity and in sponsoring specialized conferences and other mechanisms for input into the Parliamentary Sub-Committee on Equality Rights;

c. the public legal education function and the sponsoring of unspecialized conferences were of less value to the department and should be de-emphasized from the perspective of the fund;

d. the fund should be more actively promoted to ensure equal and fair access and more range in the types of proposals received;

e. goals and priorities should be more clearly defined and should include emphasis on joint projects involving legal professionals and other groups. In addition the priorities should reflect specific areas in which scholarly research should be encouraged;

f. a reduction in demand for conference sponsorship is expected given that the Charter is now fully in place. This, and a reduced emphasis on public legal education, will allow the fund to achieve its objectives and expand its client group without an increase in overall funding;

g. improvement in fund administration, including a designated contact for proposals, is necessary;

h. more emphasis must be placed on project follow-up and evaluation and a more systematic approach to information dissemination would increase the benefit of the program to a larger group within the department; and

i. the utility of and need for the program will undoubtedly continue as Charter interpretations continue. At the same time, however, it is highly probable that the priorities for the fund will change.

The major recommendations of the audit and evaluation bureau are as follows:

a. the legal profession should continue to be the primary focus but collaboration with groups outside the profession is highly desirable;

b. program priorities should be classified and communicated to a larger client group;

c. public legal education projects should be de-emphasized as they are adequately carried out by other programs;

d. a projects officer should be formally designated to deal with initial contracts and applications;

e. a more systematic method for project evaluation should be implemented, utilizing the Research and Statistics Section; and

f. fund managers should encourage joint funding projects and consider the use of contributions for seed of partial project funding.

It is understood that the Bureau of Evaluation and Internal Audit will be adding an additional recommendation to streamline the project review procedure and decrease the time demands placed on members of the Human Rights Law Fund Committee.

In its assessment, the Treasury Board Secretariat recommended that consideration be given to combining this fund with the Secretary of State's program or that some or all of the funds within the Department of Justice be combined.

ASSESSMENT

On the basis of the study team's assessment of the related Department of Justice and Secretary of State programs, it would appear that there is no duplication of function between the two funds. Moreover, given the responsibilities of the Human Rights Commission, there is no overlap or duplication with that agency and the fund is, the study team believes, most appropriately administered within justice. The Internal Evaluation is recommending an increased emphasis on joint project funding and if this recommendation is accepted, it would lead to increased coordination of efforts, but not to duplication of efforts. Given that the program mandate concerns the legal aspects of human rights, and that this will of necessity require the involvement of the legal professionals both within the Department of Justice and outside, removal of departmental responsibility for its administration would be a detrimental step in the view of the study team. At the same time, it may not be appropriate to have that department assuming responsibility for funding the broader social, political and cultural aspects of human rights which are the focus of the Secretary of State.

With respect to the Treasury Board recommendation that this fund be collapsed with others within the Department of Justice, it appears to the study team that this would be of limited value, as all demonstration funding is currently administered by a single section. There would be no administrative savings. While consolidation would provide more flexibility in transferring available funds from one target area to another, it would result in increased difficulty in choosing from among competing and different priorities. Furthermore, it is noted that the Minister of Justice already has the authority to reallocate contribution funds amongst the various funding programs.

The question of whether public legal education should continue to be an objective for the department's Human Rights Law Fund is, the study team believes, appropriately raised by the evaluation. The department also administers the Access to Legal Information Fund which was approved by Cabinet in 1984. That fund, which was not referred to the study team for review, has as its objective:

a. extending and developing the network of non-profit public legal education [and information] (PLEI) organizations through the provision of start-up funding to new organizations to facilitate the establishment of a national infrastructure of community legal information resource centres; and

b. encouraging established PLEI organizations to ensure that public needs for federal legal information are adequately met and that federal and provincial legal information is available to meet the needs of women, Natives, the elderly, youth, the poor, handicapped, immigrants and members of visible minorities.

The PLEI programs budget in 1985/86 is set at $500,000 with under-expenditure anticipated. If the PLEI terms and conditions were expanded to include public education concerning the legal aspects of human rights, it seems likely that the Human Rights Law Fund objective concerning "innovative public legal education projects" could more effectively be met within the context of a broader program aimed at increasing public access to the law and the legal system. The Access to Legal Information Fund was authorized for three years, ending in 1986/87 and is subject to review prior to extension or expansion.

The fact that the Human Rights Law Fund is over-subscribed has discouraged the department from further publicizing its existence. The recommendation in the internal audit report that publicity be expanded to increase knowledge and attract a broader range of clients and projects seems appropriate, so long as priorities are clarified and appropriate administrative and evaluative procedures are in place.

While the provision of short-term "seed" money for project start-up is appropriate under the existing Terms and Conditions of the fund, the responsibility for longer term "core" or partial funding of ongoing projects would more appropriately fall to the Secretary of State's fund in the view of the study team.

OPTIONS

The logical alternatives to the status quo with respect to the Human Rights Law Fund are:

1. merge the fund with the grants fund operated by the Secretary of State; and
2. discontinue the fund.

The study team recommends to the Task Force that the government continue the operation of the fund, subject to the improvements identified in the Bureau of Evaluation and Internal Audit's evaluation report.

SPECIAL PROJECT - LEGAL AID
Department of Justice

OBJECTIVES

The objective of the fund is to develop information to improve the delivery of legal aid services across Canada through supporting planning, research, evaluation and training initiatives, as well as experimental pilot projects. More specifically, its purpose is:

a. to support departmental policy relating to federal/provincial and federal/territorial agreements on legal aid;

b. to support the provincial and territorial legal aid plans; and

c. to support new initiatives intended to have an impact on the delivery of legal services in the legal aid context (for example, mediation in family law).

AUTHORITY

This is a non-statutory program operated by the Department of Justice. Authority for expenditures derives from the annual Appropriation Acts.

BACKGROUND

The fund was established in 1972, at the same time as the first federal/provincial cost-sharing agreement respecting criminal legal aid.

In the past, the fund was largely reactive due in large part to the protracted federal/provincial cost-sharing negotiations and the absence of clear policy direction upon which to establish project funding priorities. In October 1984, a departmental Legal Aid Projects Working Group composed of policy, research, project and financial officers, as well as a representative of the Bureau of Program Evaluation and Internal Audit, was established. The establishment of the working group, as well as the reduction in federal/provincial tensions relating to contract negotiations, has resulted in a renewed interest in utilization of the fund. Priorities have been established for project funding and the department has assumed a more pro-active approach to the development of proposals for funding.

Priorities identified for 1985/86 are:

a. improved delivery of services in remote areas;
b. improved delivery of services to Native people;
c. research in family law in federal areas of jurisdiction, including interprovincial enforcement;
d. national survey and/or studies on eligibility criteria and coverage standards for legal aid; and
e. alternative methods of service delivery, including paralegals, mediation and public interest advocacy.

In addition, the department has identified four further areas in which research, policy development and new initiatives are expected in this and subsequent fiscal years, as follows:

a. impact of the Charter on legal aid, both in terms of the implications of Section 15 and the effect of the Charter on the delivery of legal aid as defined in the cost-sharing agreement;
b. representation before federal tribunals. A recent Supreme Court of Canada decision regarding right to counsel in Immigration Appeal Board hearings has potentially significant implications for provincial plans and will likely result in intensified pressure for federal cost-sharing in federal administrative tribunal cases;
c. the implications of the Young Offenders Act for legal aid in the light of judicial interpretation and challenges under the Charter are not yet clear; and
d. the possibility of the transfer of civil legal aid cost-sharing responsibility from the Canada Assistance Plan (Health and Welfare) to Justice.

All project proposals are reviewed by the project officer responsible for the fund and by the departmental working group. Criteria for approval are specified in the Treasury Board minute which established the plan. In addition to priorities, the principal criteria for approval of funding requests for demonstration projects are their potential for inclusion in the ongoing operations of the legal aid and provincial government support for the proposal. All contribution agreements must be approved by the minister on recommendation by the department's Program Assessment Committee chaired by the Assistant Deputy Minister, Policy Planning.

Demonstration projects are subject to external evaluation under the direction of the Research and Statistics sections. Contribution agreements usually include data collection requirements.

In the past two fiscal years, the fund has been undersubscribed. The department attributes this to the preoccupation on the part of the provinces and the plans with the renegotiation of the cost-sharing agreement, a lack of clear policy direction within the department and a reluctance on the part of provinces to consider new initiatives at a time in which expenditures in all areas were being reduced. In addition, provincial restraint resulted in withdrawal of financial support for the National Legal Aid Research Center. It was anticipated that the centre would promote innovative programming and generate demand on the fund. When the centre failed, the demand did not materialize. In 1985/86, negotiations are underway or agreements have been signed in six provinces and territories. Only two provinces were involved in three demonstration or research projects in the previous fiscal year.

BENEFICIARIES

The major beneficiaries of the program are the Department of Justice in respect of information gathered through conferences, consultations, research and demonstration projects, as well as the planners who participate to the extent that service delivery mechanisms are improved and services expanded. The economically disadvantaged also benefit from improved access to legal aid.

EXPENDITURES (\$000)

	83/84	84/85	85/86
Salaries & Wages	25.3	26.7	27.7
Other O & M	.5	.5	.5
Contributions	124.9	109.3	250.0
TOTAL	150.7	137.25	278.95
PYs	.75	.75	.75

OBSERVATIONS

Staff involved with the fund recognize that prior to 1985/86, priorities for funding were not sufficiently clear to link expenditures to departmental objectives. The identification of additional policy-related staff resources and the establishment of the working group appear to have had positive effect in terms of ensuring that are expenditures related to departmental objectives.

While a cause for some concern, under-expenditures by the fund in recent years are understandable in the light of the renegotiation of the cost-sharing agreement and the essentially reactive stance which the program had assumed. In the absence of a longer term development strategy, which now seems to be emerging, demands on the fund would be expected to be variable.

Given that most provincial plans operate at arm's-length from their respective provincial governments, a third party, such as the Department of Justice, will face difficulty in attempting to develop demonstration programs in the provinces. This is particularly true when provincial governments are reducing services, as they have been for the past several years. If one accepts the validity of a federal role in the further development of legal aid delivery mechanisms, it is critical that the role be exercised in close consultation with the provinces. There is no evidence that such consultation is not occurring at the present time.

Provincial contacts, who were aware of the existence of the fund, were supportive of its intent and indicated that it was the only source of discretionary funding for legal aid projects. They did, however, stress the importance of provincial consultation in project development, approval and evaluation. As direct beneficiaries of federal funding the directors of the legal aid plans are, as expected, also supportive of the continuation of the fund and in the more proactive role which the fund is assuming.

ASSESSMENT

In its program assessment, the Treasury Board Secretariat observed:

a. "given the plethora of research and pilot project funds available in the general area of the legal/justice/category of programs", this fund may be redundant;

b. a portion of the monies available in the legal aid cost-sharing fund could be redirected to meet the objectives of the fund; and

c. under-utilization of the fund may be further evidence of redundancy, as needs may be being met from elsewhere.

The study team does not support the TBS assessment for the following reasons:

a. legal aid policy and funding at the federal level is recognized as being primarily the responsibility of the Department of Justice. There is no apparent overlap with funding programs of the Ministry of the Solicitor General or with Health and Welfare's Canada Assistance Plan. With respect to the other funding programs of the Department of Justice, under the existing terms and conditions, the types of activities and projects funded by the Special Project - Legal Aid fund would not be eligible for funding.

b. The monies available in the legal aid cost-sharing program are for transfer payments to the provinces under the cost-sharing agreement. That program, which is administered by the same section, is not structured to fund research, demonstration projects or conferences. If the functions now performed by the Special Project - Legal Aid Fund are to be retained, the section would require the same staff and financial resources as are now dedicated to the fund.

c. It would appear that the under-utilization of the fund is due to the reasons identified previously, rather than the availability of funding sources elsewhere.

In the view of the study team, the possibility of collapsing this fund with one or more other funds does exist. There would, however, appear to be limited benefit to such a move. Because all the demonstration funding programs are already administered by the same departmental section, there would be no savings in administrative overhead. The criteria for funding under the Special Project - Legal Aid Fund are clearly specified in its terms and conditions. Consolidation of the department's discretionary funding programs would necessitate the establishment of more general criteria. This could result in the department having more flexibility in the types of projects funded but would make it more difficult to control the demands placed on the fund and to choose amongst a larger number of competing priorities.

The Minister of Justice has the authority to reallocate contribution funds amongst the funding programs. This has been done in the past where one fund is under-utilized and there are insufficient resources to fund priority projects in other areas. The department, therefore, has some flexibility in redirecting funds to meet changing priorities, but that flexibility is, appropriately, controlled by the minister.

The study team believes this program and the other of the Programs and Projects Administration Section's contribution funding programs appear to be efficiently administered. A full-scale evaluation of the Special Project - Legal Aid Fund is beyond the capacity of this study team, but is being planned by the department's Bureau of Internal Audit and Evaluation after the report of the Task Force.

OPTIONS

A logical alternative to the status quo is termination of the program.

The study team recommends to the Task Force that the government continue the fund, without administrative change, subject to the planned evaluation by the department.

GRANT TO THE CANADIAN LAW INFORMATION COUNCIL
Department of Justice

OBJECTIVES

The purpose of the grant is to assist the Canadian Law Information Council (CLIC) in achieving its objective of: "Improving the quality and availability of legal information of all types for lawyers, researchers, the judiciary and the public generally in Canada and ensuring timely access to this information through the development of efficient and cost-effective manual and automated legal information systems".

AUTHORITY

This is a non-statutory program operated by the Department of Justice. Authority for expenditures derives from the annual Appropriation Acts.

BACKGROUND

CLIC was incorporated in 1973 as a charitable, non-profit corporation under Part II of the Canada Corporations Act. The statutory objects of the council, as set forth in its Charter, are:

a. generally, to promote the acquisition of knowledge of the law in Canada and its dissemination within Canada;

b. to enhance the quality and increase the availability of information pertaining to the law in Canada for the benefit of the Canadian community:

    1. by improving conventional means as well as through electronic data processing, microfilming or other means or devices; and

    2. by developing and supporting research generally in computer applications in law in Canada.

The council's three areas of priority are:

a. the improvement of publishing of statute law, regulations and case law and of the means of access to these primary sources of law;
b. the promotion of the necessary projects and programs to fill deficiencies in the substantive legal literature of Canada; and
c. the development, supply and coordination of legal materials intended for the non-lawyer with particular reference to an individual's personal rights and rights vis-à-vis government and agencies of government.

The council operates in a tiered structure which includes:

a. the full council, consisting of the general membership and including senior representatives of the federal, provincial and territorial governments, Canadian Bar Association and private bar representatives, law book publishers, the law deans, law teachers and library associations, as well as other private sector companies involved in the field. The council has overall responsibility for by-laws, funding and programming decisions and policies;

b. the Board of Governors and an executive are elected for one-year terms and have more direct control over the implementation of the full council's directions; and

c. seven advisory committees consisting of members of the council and other experts are currently constituted to provide advice on specific programs or projects and other functions such as audit and nominations.

CLIC operates offices in Ottawa and Toronto and has a staff of approximately 30 people, headed by an executive director. In 1984/85, the operating budget was $2.26 million, approximately half of which was allocated to the statutory indexing program.

The major program activity areas of CLIC and examples of specific projects within those areas are:

1. Computers and the Law: intended to promote the utilization of computer technology to assist in legal research and information dissemination and to expand available databases to that end. CLIC has developed a self-instruction program entitled Computer Assisted Legal Research: A Guide for Canadian Law Students and distributed copies to all law schools, as well as negotiated a reduced user rate on QL Systems, the major database for law students. In addition, CLIC undertook to provide QL with a French-language capability and prepared a number of proposals for database improvement and standardization.

2. Indexing: intended to improve access to statutory materials, this project involves the use of a computerized system of indexing developed by CLIC to generate indices to access government statutes. Since 1981, indices and updates have been produced for British Columbia, Ontario and Alberta. Previously, CLIC produced a manual index for Newfoundland to prove the feasibility of developing topic indices. Currently, CLIC is preparing indices for the Revised Statutes of Canada (expected to be adopted in 1986) and the Quebec statutes.

3. Public Legal Education and Information (PLEI): intended to improve public access to legal information, this activity aims at strengthening and promoting the network of PLEI organizations across Canada. CLIC's Legal Information Secretariat, located in Toronto, has been involved in developing materials for use by PLEI organizations and in providing consultation and information resource services to them.

4. Regulatory Reporter: CLIC publishes the Regulatory Reporter which reports monthly on regulatory decisions in the fields of communications, at both the federal and provincial levels, transportation and energy. This is the major source of information on the decisions of regulatory agencies in these fields.

5. Reference Centre for French Language Common Law Documentation: given the increased use of the French language in common law jurisdictions, this program is intended to encourage the development of common law materials in French and to act as a clearinghouse and reference centre for documentation and information. The centre has published a looseleaf bibliography on French language material, as well as a newsletter and personnel directory.

6. Research and Legal Literature: this activity involves the study and investigation of issues and the identification of solutions relating to areas under CLIC's mandate. Particular emphasis has been given to the case law reporting system in Canada with the intent of improving access to judicial decisions, avoiding duplication in law reports and developing standards for headnotes. Efforts also include the introduction of a standardized numbering system for court cases and the development of indices for legal literature, statutory terminology and the like.

The major sources of funding and the actual and proportionate contributions for 1984/85 were as follows:

	($000)	**%**
Federal Department of Justice grant	445	25
Provincial governments - grants	209	12
Law societies	97	06
Law foundations	182	10
Indexing project - contracts	360	21
Secretary of State - contracts	108	06
Regulatory Reporter - subscriptions	55	03
PLEI contracts - Dept. of Justice	123	07
Publishers & private sector membership	18	01
Other	150	09
TOTAL	1,747	

All provincial governments, except Manitoba and Yukon, contributed to CLIC in 1984. The original agreement was for the provinces to match the federal contribution, in proportion to their populations. This has not been achieved. All law societies contribute, as do all law foundations, except Ontario's. In recent years, reductions in trust-fund interest and increased demands for funds from provincial agencies, such as the legal aid plans, have reduced the availability of foundation grants.

In addition to the grant program, in 1984/85 the Department of Justice contracted for or made contributions to CLIC for the indexing of the federal statutes, PLEI activities under the Access to Legal Information Fund, administering of the Justice exhibit at the 1984 Canadian National Exhibition and the development of a manual for program evaluation by PLEI service agencies. The activities relating to the Reference Centre for French Language Common Law Documentation are cost-shared with the Secretary of State.

BENEFICIARIES

The major beneficiaries of the grant to the council are the legal community both in and out of government, other users of law libraries, law teachers and students. In that the grant provides for a large portion of the infrastructure costs of the council, it also benefits the federal departments in that CLIC is able to undertake contract work for them.

EXPENDITURES ($000)

	83/84	84/85	85/86
Salaries & Wages	0	0	0
Other O&M	0	0	0
Grants	424.0	445.2	400.0[1]
TOTAL	424.0	445.2	400.0
PYs	0	0	0

OBSERVATIONS

An evaluation of CLIC is currently under way by the department's Bureau of Evaluation and Internal Audit. The design is currently being finalized; the evaluation expected to be completed within three months.

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[1] The fiscal 1985/86 reduction was part of the department's effort to reduce growth in government spending.

Support for CLIC within the legal community is high. All provincial governments participate in the committee structure, often at the deputy minister level. Quebec's participation, financially and actively, has been relatively low, primarily because of the council's emphasis on common law. However, it is understood Quebec's interest and participation has been increasing in recent years.

Treasury Board Secretariat observed that there appears to be some duplication of effort in the PLEI area between the department and CLIC. In fact, both agencies see their efforts as complementing each other and the department sees CLIC as assuming the key role in supporting the network of PLEI service organizations when the Access to Law Information fund authorization expires at the end of 1986/87. The department's three-year, $75,000-per-year contribution to CLIC is intended to enable the council to assume a central role in supporting the PLEI network across Canada when the department's initiative ends.

A new Institute of Computers and the Law has been established at the University of British Columbia. The full program has not been finalized, although it would appear that the efforts of the institute do not duplicate those of CLIC. Priorities for the institute include computer applications for law course instruction, continuing legal education and bar admission exams and computer applications in sentencing decision-making. These areas are not covered by CLIC activities.

The composition of full council and the Board of Governors is probably unique in federal/provincial justice areas in that the private sector is a full participant in decision-making. Given that the private publishers are directly affected by the council and that the council could be seen as being in competition with the publishers, the participation of the private sector is seen as essential by council staff and federal, provincial and private bar participants.

The model for project development adopted by CLIC is to identify needs, develop and implement solutions, demonstrate viability and, if it is commercially viable, pass the initiative to the private sector. This was achieved in the case of the Supreme Court of Canada's decision summaries.

The Regulatory Reporter, which is now in its fifth year of publication, is currently paying for itself through subscription fees. No private publisher has shown a desire to assume this responsibility to date, however, because of a relatively low projected profit margin.

CLIC is making recommendations regarding duplication of private sector publications and the quality of some publications, particularly headnotes, resulting in criticism of CLIC from some quarters in the publishing industry.

A major American legal database company planning to enter the Canadian market, in direct competition to QL Systems and potentially other legal publishers, has asked for membership in CLIC.

ASSESSMENT

In the absence of an evaluation of CLIC, it is difficult for the study team to assess the value of the department's contribution to the council. It can be said that support for the initiative is high among the legal community and provincial governments.

The entry of American competitors into the field may make the role of CLIC as a coordinating mechanism for legal publishers and governments more important. There has been some concern expressed on the potential loss of control over this aspect of the publication industry to foreign control.

The Treasury Board Secretariat observation regarding overlap between CLIC and Justice PLEI initiatives, does not appear to be valid in the view of the study team. CLIC is being encouraged to play a greater role in supporting PLEI initiatives and contribution funds are being directed to that purpose.

A significant reduction in the grant would likely have a snowball effect, leading to significant reductions in grants from other sources and likely negatively affect the Council.

OPTIONS

A logical alternative to the status quo is termination of the program.

The study team recommends to the Task Force that the government continue the program, subject to the results of the evaluation now underway.

DUFF-RINFRET SCHOLARSHIPS
Department of Justice

OBJECTIVES

The objective of the Duff-Rinfret Scholarship Program is to promote legal research on and advanced study of areas of law relevant to federal jurisdiction by providing scholarships for law students at the Masters level.

AUTHORITY

This is a non-statutory program. Authority for its operation derives from the annual Appropriation Acts.

DESCRIPTION

The program, begun in 1975, was initiated by the Department of Justice with a view toward producing legal scholars and materials in areas of federal jurisdiction and assisting the expansion of graduate law schools in the process. It was hoped that this program would provide scholarly work of relevance to federal policies and a pool of potential advisers informed about and concerned with legal matters of direct relevance to the federal government.

Each year seven scholarships are offered at the Masters level. In 1985/86 each scholarship is valued at $11,000 plus tuition fees, a travel allowance of $800 and a thesis allowance of the same amount.

A 1981 program evaluation conducted for the Department of Justice concluded that the program had not met its objectives. It pointed out that after its first six years of operation, at a cost of approximately $450,000, only four recipients were employed by the federal government. Moreover, the evaluation found no perceptible development of graduate schools stemming from the program. It suggested that a more effective alternative to ensure that relevant legal research was undertaken would be the giving of grants to selected law professors to prepare research materials. Termination of the program was recommended.

A 1983 report prepared by the Department's Bureau of Program Evaluation and Internal Audit concurred with the 1981 evaluation and also recommended termination of the program. The bureau concluded that while the program was efficiently administered, it did not contribute in a substantial way to the mission and objectives of the Department of Justice.

In response to the evaluation, the program managers argued that the evaluation and the conclusions of the bureau were not valid, that the program should be retained and, in fact, that it should be expanded. They pointed out that:

a. Because the number of scholarships awarded annually had been reduced from 17 to seven in the second year of the program's operation, the initially stated objective of assisting in the development of graduate law programs became unachievable.

b. The number of graduates working in the department was not a valid measure of the benefit derived by the federal government. The majority of graduates indicated that they were working wholly or partially in areas of federal jurisdiction. Moreover, at that time (1983), almost half of all theses produced had been published. It was pointed out that federal lawyers undoubtedly benefited from that work, as well as from the subsequent research undertaken by graduates.

c. A number of administrative changes had been made since the 1981 evaluation to increase the profile and prestige of the program.

Highlighting, from the perspective of the legal and academic community, the need to encourage more graduate programs in Canada, the Consultative Group on Research and Education in Law recommended in 1983 the extension of the program to cover doctoral and post-doctoral studies and the establishment of paralleled programs by provincial governments.

The Social Science and Humanities Research Council of Canada also offers doctoral and post-doctoral fellowships which are available to lawyers, although the focus of study is not limited to areas of federal government responsibility.

BENEFICIARIES

The major beneficiaries of the program are the seven graduate students who annually receive the awards. To date, 77 students have received the scholarships. Previous evaluations have indicated that the law schools and the Department of Justice derive some minimal benefit from the program. Program managers, however, maintain that there has been considerable indirect benefit to the department in terms of the quality and quantity of research and well-trained lawyers available.

EXPENDITURES

	83/84	84/85	85/86
Salaries and Wages	16,200	17,000	17,850
Other O&M	0	0	0
Grants	82,900	95,500	95,500
TOTAL	99,100	112,500	113,350
PYs	.6	.6	.6

OBSERVATIONS AND ASSESSMENT

Two previous evaluations, as well as the Treasury Board Secretariat review, recommended termination of this program. In support, they point out that it does not contribute in substantial ways to the mission or objectives of the Department of Justice.

Program managers acknowledge that the original objectives for the program were overly ambitious, particularly in light of the reduction in the number of scholarships offered. While there has been no formal redefinition of objectives, those involved in the program now accept its objectives as being the promotion of superior legal scholarship and expertise in areas of federal jurisdiction and the development of an expanded body of legal research of relevance to federal areas of responsibility. In addition, program managers see a high-profile federal involvement in post-graduate legal education as important and worth enhancing.

The program has a fair amount of support among the legal profession. If the program was dropped or transferred from the Department of Justice, criticism of the department's commitment to excellence in the field of legal research could be expected.

Given the need for research and development in law and the administration of justice, it is important that the limited resources available be utilized in the most effective manner. The establishment of a strategic theme in "Criminal Justice Research" by the SSHRC could permit more effective use of these resources within the context of a national strategy for the development of knowledge and expertise in the criminal justice field.

OPTIONS

The alternatives are:

1. maintain the program as currently constituted;

2. terminate the program as of March 31, 1987 and maintain the resources allocated to it within the budget of the Department of Justice to be made available for scholarships or fellowships within the context of a SSHRC strategic theme on "Criminal Justice Research" effective April 1, 1987; or

3. terminate the program as of March 31, 1987.

The study team recommends to the Task Force that the government consider terminating the program as of March 31, 1987 and maintaining the resources allocated to it within the budget of the Department of Justice to be made available for scholarships or fellowships within the context of a SSHRC strategic theme on "Criminal Justice Research" effective April 1, 1987.

CONSULTATION AND DEVELOPMENT FUND
Department of Justice

OBJECTIVES

The objectives of the fund are as follows:

a. to support innovative projects in the area of research and development in relation to non-criminal areas of law;

b. to assist in the development and/or publication of legal information materials to better inform citizens of their rights and responsibilities under the Canadian legal system;

c. to encourage consultation in relation to reports and recommendations of the Law Reform Commission in civil and administrative law; and

d. to support non-government conferences of interest to the department.

AUTHORITY

This is a non-statutory program. Authority for its operation derives from the annual Appropriation Acts.

DESCRIPTION

In 1978, the Consultation and Development Fund was established as a permanent fund replacing two smaller funds which had provided support for legal research and development as well as public legal education materials in non-criminal areas of federal jurisdiction since 1972.

Its main purposes are:

a. to provide support for the Public Law Branch in relation to policy development in constitutional and administrative law;

b. to provide support to the Policy, Programs and Research Branch in relation to non-criminal law policy development in general and family law in particular;

c. to provide support for the public legal information activities of the department not covered by the Access to Legal Information Fund, including: the Public Legal Education and Information Conference, some aspects of publication-funding including printing costs, and projects directed at target groups outside of those classified as disadvantaged, including the general public; and

d. to support activities not covered by the other discretionary funds of the department.

Priorities for funding of projects relating to constitutional and administrative law are established annually by the Public Law Branch and for family law projects, by the Policy, Programs and Research Branch. During 1985/86, the public law priorities are:

a. the Constitution: changes to Constitutional Act;

b. reform section 96; Administrative Tribunals;

c. reform of national institutions;

d. federal statutes compliance;

e. access to justice;

f. extent and nature of state interventions;

g. administrative law reform;

h. access to information and privacy;

i. extraterritorial application of Canadian law; and

j. national resources.

The priorities for family law-related funding were:

a. divorce and enforcement:

  - implementation of new legislation;
  - effect of divorce on children;
  - effect of inadequate maintenance on children and dependent spouses;

b. national conference on mediation and conciliation;

c. rights of children in the context of family law including representation; and

d. family law and Native people.

Applications for funding are considered by the project officer in consultation with the appropriate public law and policy staff. Approval for proposals is recommended to the minister by the Projects Assessment Committee, chaired by the Assistant Deputy Minister, Policy Planning. Depending on that committee's meeting timetable, scheduled projects under $25,000 may be circulated to committee members for approval.

While the terms and conditions of the fund provide for the funding of innovative projects, during 1984/85 no demonstration projects were undertaken. The bulk of the funds are directed to legal research, conferences and publications. As a consequence, projects are not subject to a formal evaluation by the Research and Statistics Section, although all projects are reviewed prior to approval by staff from that section.

There are no comparable funds operated by the Department of Justice.

The fund is over-subscribed annually. In 1983/84, for example, funding requests totalling $1.1 million were received and in 1984/85 the department began to discourage applications when the balance available fell below $10,000 in June. In light of under-utilization of the resources available to the sentencing sub-component of the Criminal Law Reform Fund, $80,000 was transferred to the Consultation and Development Fund in 1985/86 to meet the demand there.

BENEFICIARIES

The major beneficiary of the fund is the Department of Justice as a vehicle for consultation and research to support departmental initiatives relating to public and family law.

EXPENDITURES ($000)

	83/84	84/85	85/86
Salaries and Wages	25.3	26.7	27.7
Other O&M	0	0	0
Contributions	141.0	160.0	240.0*
TOTAL	166.3	186.7	267.7
PYs	.75	.75	.75

* Includes $80,000 transferred from sentencing Criminal Law Reform Fund in 1985/86.

OBSERVATIONS

The fund has not been subject to a formal evaluation, although the Bureau of Management Consultants completed an "Evaluation Overview" of all "Thrust" (discretionary) funds in the department in October, 1985. That overview identified some 22 evaluation and management questions and recommended that an "Evaluation Assessment" be undertaken. (An evaluation assessment is a further review prior to a full scale evaluation of program effectiveness and efficiency.) The BMC report also recommended that the five major funds and their sub-funds be treated as one fund on the basis that management issues (unidentified) cut across all funds, client groups are unlikely to differentiate between funds and that "trade-offs between instruments" cut across funds.

With the exception of the Human Rights Law Fund which is targeted specifically to matters relating to human rights, this is the only source of non-criminal law related discretionary funding in the department for the promotion of consultation and research in public and family law areas.

In its assessment of the Department of Justice's contribution funding programs, the Treasury Board Secretariat recommended collapsing the funds to form a single contribution program.

ASSESSMENT

In the view of the study team, the possibility of collapsing this fund with one or more other funds does exist. There would, however, appear to be limited benefit to such a move. Because all the demonstration funding programs are already administered by the same departmental section, there would be no savings in administrative overhead. The criteria for funding under the Consultation and Development Fund are clearly specified in its terms and conditions. Consolidation of the department's discretionary funding programs would necessitate the establishment of more general criteria. This could result in the department having more flexibility in the types of projects funded but would make it more difficult to control the demands placed on the fund and to choose among a larger number of competing priorities.

The Minister of Justice has the authority to reallocate contribution funds amongst the funding programs. This was done in 1985/86 where one fund is under-utilized and there are insufficient resources to fund priority projects under this fund. The department, therefore, has some flexibility in redirecting funds to meet changing priorities, but that flexibility is, appropriately, controlled by the minister responsible.

This and the other of the Programs and Projects Administration Section's contribution funding programs appear to be efficiently administered. A full-scale assessment of the Consultation and Development Fund is beyond the capacity of this study team, but is being planned by the department's Bureau of Internal Audit and Evaluation after the report of the Task Force.

OPTIONS

The logical alternatives are:

1. Continue the fund, subject to the planned evaluation by the department.
2. Increase the resources available in the fund to meet a greater portion of the demand being experienced, subject to the findings of the internal evaluation.
3. Terminate the program.

The study team recommends to the Task Force that the government continue the program, subject to the planned evaluation by the department.

GRANT TO THE CANADIAN INSTITUTE OF RESOURCE LAW
Department of Justice

OBJECTIVES

The objective of the grant is to support the Canadian Institute of Resource Law, an independent, non-profit organization which undertakes and promotes legal research, education and publications on Canadian natural resources.

AUTHORITY

This is a non-statutory program operated by the Department of Justice. Authority for expenditures derives from the annual Appropriation Acts.

BACKGROUND

The Canadian Institute of Resource Law is attached to the Law School at the University of Calgary. It is a highly regarded research and educational institute specializing in resource law. In addition to undertaking legal research, the insitute sponsors conferences, seminars and courses in that area of law.

From 1981/82 through 1983/84, the department provided grants of $10,000 per year for a major project entitled "the continental shelf project". The study was jointly funded by the department, the Government of Alberta and the oil industry.

In 1984/85, Treasury Board authorized a one-time grant of $25,000 for general support for the work of the institute. A similar one-time grant of $25,000 was authorized by Cabinet in 1985/86. A matching grant from EMR was also authorized by Cabinet during the current fiscal year. In both years, under-expended funds from other areas of the department's appropriation were utilized.

BENEFICIARIES

With respect to the grants made from 1981/82 through 1983/84, the Department of Justice benefitted through the product being produced, specifically, a publication resulting from a specific project. With respect to the more recent $25,000 grants, the major beneficiary is the institute itself, although the federal and provincial governments and the public at large do benefit from the research and educational efforts of the Institute.

EXPENDITURES ($000)

	83/84	84/85	85/86
Salaries and Wages	0	0	0
Other O&M	0	0	0
Grants	10.0	25.01	25.0*
TOTAL	10.0	25.0	25.0
PYs	0	0	0

* In 1984/85 and 1985/86, the grants were not approved in the main estimates but were given with Treasury Board or Cabinet approval from unexpended funds in other areas.

OBSERVATIONS

While the reputation of the institute is described by the department as being very good in the field, the continuation of this grant program was not afforded a high priority.

ASSESSMENT

In the view of the study team, given the absence of any clear direct benefit to the department from the sustained funding of the institute and the low priority afforded it by departmental staff, there seems little justification for the continuation of ad hoc, reallocations of funding resources to the institute, as has occurred in the past two fiscal years.

OPTIONS

As this program has not appeared in the main estimates for the past two fiscal years, and no submission proposing ongoing funding is anticipated, it is assumed that this program will disappear at the end of fiscal 85/86. Had this been an 'A' base program, termination would have been put forward as an alternative.

GRANT TO THE HAGUE ACADEMY OF INTERNATIONAL LAW
Department of Justice

OBJECTIVES

The grant is intended to support the Hague Academy of International Law's program for summer courses involving lectures from international law experts to jurists from around the world.

AUTHORITY

This is a non-statutory program operated by the Department of Justice. Authority for expenditures derives from the annual Appropriation Acts.

BACKGROUND

The academy has been presenting the summer courses since 1923 and has amassed a large collection of the lectures presented during the courses. Participation by jurists in the program is considered prestigious.

The work of the academy has been mainly financed by the Government of the Netherlands and American foundations. Around 1973, the American foundations ceased support and European foundations carried that portion of the funding burden until 1973 on a reducing scale. The academy then appealed to all countries with embassies in the Netherlands to support the initiative. Canada has been contributing to the academy since 1976.

BENEFICIARIES

The main beneficiary of the grant is the academy itself. Jurists, including Canadians, who attend also benefit as do experts on international law who have access to the academy's collection.

EXPENDITURES ($000)	**83/84**	**84/85**	**85/86**
Salaries and Wages	0	0	0
Other O&M	0	0	0
Grants	11.5	12.0	12.0
TOTAL	11.5	12.0	12.0
PYs	0	0	0

OBSERVATIONS

The value of participating in the support of the academy is extremely difficult to quantify. Canada's contribution is modest and it is unlikely that elimination of its grant would significantly affect the operation of the academy.

At the same time, it could be argued that given Canada's well-developed judicial system, its reliance on international trade and the priority given public international law by the Department of Justice, Canada has a responsibility to contribute to the support of the infrastructure of the international law community, an important element of which is the academy.

ASSESSMENT

There are no objective criteria upon which to judge the effectiveness of the grant or of the academy's overall program. Continued funding is supported by the Department of Justice on the grounds identified above.

Discontinuation of the grant would undoubtedly attract criticism from other countries which contribute and from the academy.

OPTIONS

The only logical alternative to the status quo is discontinuation of the grant, an option which would attract criticism but likely have minimal effect on the operation of the academy.

The study team recommends to the Task Force that the government continue the program.

GRANT TO THE BRITISH INSTITUTE OF INTERNATIONAL AND COMPARATIVE LAW
Department of Justice

OBJECTIVES

This grant is intended to support the Commonwealth Legal Advisory Service (CLAS) operated by the British Institute of International and Comparative Law.

This is a non-statutory program operated by the Department of Justice. Authority for expenditures derives from the annual Appropriation Acts.

BACKGROUND

The Commonwealth Legal Advisory Service was established in 1963 following the 1961 meeting of Commonwealth Prime Ministers at which the need for an organization to allow Commonwealth countries to assist each other in the legal field was identified. CLAS is a central source of library services on British law and legal opinions. The service is used mainly by under-developed countries of the Commonwealth where such services do not exist, although the Department of Justice and provincial attorneys general may also access the free services of CLAS. The Institute has become a clearinghouse for information and studies on legal developments in all Commonwealth countries.

Commonwealth governments contribute toward the budget of CLAS in the same proportion as they contribute to the budget of the Commonwealth secretariat. Prior to 1978/79, the annual grant was made by the Canadian International Development Agency. Because of expenditure restraint in that year, CIDA ceased funding the service and the Department of Justice assumed responsibility.

BENEFICIARIES

The major beneficiaries of this program are lawyers and governments in third world countries who can avail themselves of the services of CLAS. The government of Canada and provincial attorneys general could also benefit in that they also have free access to the services.

EXPENDITURES **($000)**

	83/84	84/85	85/86
Salaries and Wages	0	0	0
Other O&M	0	0	0
Grants	10.0	10.0	10.0
TOTAL	10.0	10.0	10.0
PYs	0	0	0

OBSERVATIONS

As with other Department of Justice grant programs, the benefit of the expenditure to the department is extremely difficult to quantify. The contribution is small and it is thought unlikely that the elimination of the grant would negatively affect the continuation of the service.

Department of Justice lawyers do make some limited use of the service but the primary rationale for the grant is to aid third-world governments and lawyers. Departmental legal staff estimate that approximately five out of 200 requests to the service originate from Canada.

ASSESSMENT

In the absence of an evaluation of the Commonwealth Legal Advisory Service, there are no objective criteria on which to assess the value of this program to either the third world or the Department of Justice. The initiative was clearly not seen as being of sufficient priority by CIDA to warrant funding during a period of expenditure restraint. From a somewhat narrower perspective, that of support to the development of the legal community in the third world, it is evident that the state of development of resource capacity to support legal work is limited and that the service is a valuable assistance in the effort to improve the quality of legal opinions and decisions.

There seems to be little connection between the mandate of the department and the purpose of this grant, which can best be described as technical assistance to the third world. Given CIDA's decision to drop the program in

1978/79, there seems little justification for Justice to continue with it.

OPTIONS

The logical alternative to continuing the program is to drop it on the grounds that it is of little value to the department and was not deemed to be a high priority by the major federal agency responsible for foreign assistance.

The study team recommends to the Task Force that the government consider terminating the program.

GRANT TO THE INTERNATIONAL COMMISSION OF JURISTS
Department of Justice

OBJECTIVES

The grant is intended to assist the International Commission of Jurists (ICJ), the objective of which is the maintenance of justice and respect for the legal rights of individuals throughout the free world.

AUTHORITY

This is a non-statutory program operated by the Department of Justice. Authority for expenditures derives from the annual Appropriation Acts.

BACKGROUND

The ICJ, which was established in 1952, is headquartered in Geneva and has a membership composed of prominent jurists from nations within the free world. It describes itself as a non-political organization dedicated to encouraging the maintenance of justice and respect for legal rights of individuals throughout the free world and to serve as the legal conscience of the world in fighting against any systematic violation of internationally recognized systems of justice.

It attempts to achieve its objectives through moral suasion, publicizing violations of the rule of law and the maintenance of a network of leading jurists throughout the free world. The commission publishes the Review of the ICJ.

Canada has been associated with the commission since 1952. In 1982/83, a Canadian branch was established. Of the $18,500 grant, $2,500 is directed to the operation of that branch.

BENEFICIARIES

The beneficiaries of this program are the jurists who are interested in and participate in the work of the commission.

EXPENDITURES (\$000)

	83/84	84/85	85/86
Salaries and Wages	0	0	0
Other O&M	0	0	0
Grants	18.5	18.5	18.5
TOTAL	18.5	18.5	18.5
PYs	0	0	0

OBSERVATIONS

In practical terms, the impact of the $18,500 contribution to the maintenance or promotion of the legal rights of individuals throughout the free world is minimal. No objective measures of the effectiveness of the commission's work are available and the significance of Canada's contribution cannot be measured.

Canada does, apparently, have a high profile in the commission and the field of individual legal rights. The first president of the commission was the Honourable J.T. Thorson, former President of the Exchequer Court. The Province of Quebec also contributes to the commission.

ASSESSMENT

It is impossible to assess the benefit of this program, other than in terms of the value of the maintenance of contact with a network of leading jurists in this and other countries.

Discontinuation of funding could be interpreted as a lack of federal government and Canadian support for the principles of the rule of law and individual rights.

OPTIONS

The study team recommends to the Task Force that the government consider continuing the program.

RESEARCH GRANT -
UNIFORM LAW CONFERENCE OF CANADA
Department of Justice

OBJECTIVES

This grant is intended to provide the Uniform Law Conference of Canada with the capacity to undertake limited research using experts external to those who normally participate in the work of the conference.

AUTHORITY

This a non-statutory program of the federal Department of Justice. Authority for the expenditure derives from the annual Appropriation Acts.

BACKGROUND

Prior to 1973, the Uniform Law Conference of Canada had virtually no funds of its own with which to undertake legal research. It was felt that the conference should have a limited budget of its own to facilitate its work, rather than having to rely in all cases on voluntary work done as and when time permits. In addition, such a budget would allow the conference to benefit from the knowledge and advice of acknowledged experts not involved in the conference itself.

The grant consists of the difference, in any given year, between the cash on hand at year end and $75,000, or $25,000, whichever of the two amounts is lesser.

Priorities for research expenditures are approved by the executive committee of the conference from among the projects approved by the conference.

Other than the monies available in the conference's general revenue fund, the conference has no other source of monies for external research.

BENEFICIARIES

The major beneficiaries of the program are the provincial, territorial and federal governments which benefit from the deliberations and products of the conference. To the extent that uniformity in laws among the various jurisdictions is encouraged, the public also derives benefit.

EXPENDITURES (\$000)

	83/84	84/85	85/86
Salaries & Wages	0	0	0
Other O & M	0	0	0
Grants	23.5	5.6	1.1
TOTAL	23.5	5.6	1.1
PYs	0	0	0

In each of the two previous fiscal years, the grant was $25,000.

OBSERVATIONS

While much of the work of the conference is in areas of law within provincial jurisdiction and, hence, a disproportionate benefit could be seen as being derived by the provinces, the federal government has benefitted directly from the expenditures by the conference of funds for external research. For example, external research funds have been utilized for the Uniform Evidence Act project of the conference. This, in fact, has been the major use of these funds.

While the maximum grant in any given year is $25,000, in this and the previous fiscal year the actual grant has been considerably less. Because the need for external research will vary, depending on the projects undertaken, the amount of the grant will also vary. It should be noted that the actual expenditure by the federal government on this program has not been large because of the formula established.

Without the existence of this grant for external research and the printing of materials related to the Uniform Evidence Act and the work of the Evidence Task Force, the federal government would have had to underwrite the costs of the work through some other means.

ASSESSMENT

In the view of the study team, cancellation of this program or a reduction in the maximum grant would not significantly impair the normal functioning of the conference. Its flexibility and ability to undertake particularly large or complex areas of work, such as the Uniform Evidence Act would, however, be reduced. It is likely that other ad hoc means to fund work of that type would have to be established and that the federal Department of Justice would be asked to underwrite the work. In the absence of the annual grant, it would be more difficult for the conference to fund external research in areas of provincial responsibility as it would be more difficult to justify ad hoc funding by the federal department in these cases.

The grant can be justified on the basis that the federal government does and should play a national role in facilitating uniformity of legislation, even when that legislation is primarily or wholly in areas of provincial competence. Although it is difficult to quantify, the value of the benefit accruing directly and indirectly to the federal government from the work of the conference undoubtedly exceeds the $4,000 administrative expenses grant. As the bulk of the external research expenditures to date has related to the Uniform Evidence Act, there is little doubt that the federal government has received value for money from this program in the opinion of the study team.

Treasury Board, in its program assessment, recommended collapsing the two Uniform Law Conference grants. Given that this would not reduce administrative overhead, as both grants are administered by the same section of the department, no cost savings would result. Moreover, given that the $4,000 administrative expenses grant is matched by each of nine of the 10 provinces, with the two territories and Prince Edward Island contributing $2,000 each, there is some rationale in keeping the administrative grant separate from the research grant, if both are to continue.

OPTIONS

The alternatives are as follows:

1. Retain the research grant as is or combined with the administrative grant. This would permit the

conference to continue to operate as at present and to undertake larger research projects as and when required.

2. Reduce the amount of the grant to reflect the fact that the maximum has not been given in recent years. This would not save the federal government any money, unless large projects reduced conference resources to the point where the $25,000 ceiling kicked in.

3. Eliminate the program. This would limit the conference's ability to undertake large or complex projects and could well result in future ad hoc requests for additional resources being directed to the federal government.

The study team recommends to the Task Force that the government consider continuing the program.

ADMINISTRATIVE EXPENSES - UNIFORM LAW CONFERENCE OF CANADA
Department of Justice

OBJECTIVES

This grant is intended to help defray the administrative costs of the Uniform Law Conference of Canada.

AUTHORITY

This a non-statutory program of the federal Department of Justice. Authority for the expenditures derives from the annual Appropriation Acts.

BACKGROUND

The Uniform Law Conference of Canada was established following a recommendation of the Canadian Bar Association that each provincial government appoint commissioners to attend conferences organized for the purpose of promoting uniformity of legislation in the provinces. The first conference was held in 1918 and annual conferences have been held in every year since then, except 1940. All provinces, the two territories and the federal government participate in the conference. The federal governmnent has participated since 1935.

Most provinces provide for annual grants to the conference and the sending of delegates in statute. Other jurisdictions, including the federal government, have taken no legislative action relating to the appointment of representatives or the making of grants.

The annual contribution for administrative expenses is $4,000 for the federal government and each province, except Prince Edward Island, the Yukon Territory and the Northwest Territories, which contribute $2,000 per annum. Annual contributions total approximately $46,000, with some variation due to late payments. The major administrative expenses include printing of proceedings and occasional special reports, an honorarium for the executive director and the costs of holding the annual meeting and of executive travel.

The conference is divided into three sections:

a. The Uniform Law Section, the purpose of which is to promote uniformity of legislation in Canada in those branches of law for which uniformity is desirable and practicable. Examples of uniform acts which are or have recently been the subject of work by this section include:

   - Maintenance and Custody Act;
   - Franchises Act;
   - Evidence Act;
   - Uniform Sale of Goods Act; and
   - Uniform Custody Jurisdiction Act.

b. The Criminal Law Section, the purpose of which is to study and prepare in legislative form amendments to the criminal code and related statutes. An indication of the role of this section is the fact that more than 50 per cent of the 220 resolutions passed by the section between 1977 and 1981 were adopted in Bill C-19 which died on the order paper in 1984.

c. The Legislative Drafting Section, which concerns itself with matters of general interest in the field of legislative drafting and with matters referred to it by the other two sections.

The bulk of the work of the conference is undertaken by the executive, local secretaries (in each jurisdiction), the executive director and members of ad hoc committees. conference work is undertaken in addition to the normal duties of the participants, most of whom are federal or provincial public servants.

Since 1973, the federal government has provided the conference with a small research grant with which to cover external research and related printing expenses. (See previous assessment.)

BENEFICIARIES

The major beneficiaries of the program are the provincial, territorial and federal governments, which benefit from the deliberations and products of the conference. To the extent that uniformity in laws among the various jurisdictions is encouraged, the public also derives benefit.

EXPENDITURES (\$000)

	83/84	84/85	85/86
Salaries & Wages	25	26	26
Other O&M	0	0	0
Grants/Contributions	4	4	4
TOTAL	29	30	30
PYs	.33*	.33	.33

* The .33 person-year ascribed to this program is in fact an estimate of the resources allocated to undertake the work of the conference. The resources allocated to grant administration are miniscule.

OBSERVATIONS

While the majority of the projects undertaken by the Conference relate to areas of law primarily or exclusively in provincial jurisdiction, some of the projects are of direct relevance to the federal government. For example, the Uniform Evidence Act now under active consideration by the Department of Justice for introduction in Parliament, is a product of the conference. In other areas, such as in the cases of the draft Franchises Act and Vital Statistics Act, which are currently being developed, the federal interest is indirect. In the case of the Franchises Act, which is an area of provincial jurisdiction, it was the federal government which proposed that uniform legislation be developed, its primary concern being the operation of franchising schemes of questionable viability. Statistics Canada has requested that the conference prepare a new Vital Statistics Act to replace the existing uniform act adopted by the conference in 1949 and currently enacted in 10 provinces and territories.

The work of the Criminal Law and Legislative Drafting Sections is of direct relevance to the Department of Justice given its responsibility for criminal law and federal legislative drafting.

If the federal government was to cease contributing to the administrative expenses of the conference, the appropriateness of its continued participation in the work of the conference would be in doubt. Such a move would be taken as a sign that the federal government is no longer supportive of the conference or its aims. While the conference did operate without federal government involvement between 1918 and 1935, it is impractical to envisage it doing so at the present time.

ASSESSMENT

The grant itself is relatively small ($4,000 per annum) and is matched by the provinces. The federal government derives benefit from the conference which also contributes significantly to the national legislative regime. The work of the conference is supported by the provinces.

In the view of the study team, withdrawal of the federal government from participation would detract significantly from the national objective of legislative uniformity.

OPTIONS

The only logical alternative to the status quo is to discontinue the grant. The effect of such a move would be a reduced role for the federal government in legislative reform, the elimination of an important forum for input to criminal law amendment initiatives and quite likely the need for a more expensive consultative process for the provinces and the federal government.

The study team recommends to the Task Force that the government continue the program.

GRANT TO CANADIAN ASSOCATION OF PROVINCIAL COURT JUDGES
Department of Justice

OBJECTIVES

The purpose of the grant to the Canadian Association of Provincial Court Judges (CAPCJ) is to help defray the costs of the association's annual conference and seminars, and to ensure that federal legislation and policy priorities are considered within the continuing education and professional development program of the provincial court judiciary.

AUTHORITY

This is a non-statutory program operated by the Department of Justice. Authority for expenditures derives from the annual Appropriation Acts.

BACKGROUND

The CAPCJ holds annual conferences and seminars for the continuing professional development of provincial court judges and magistrates. Since 1975, the Department of Justice has contributed to the cost of that program. The contribution is justified by the department on the grounds that national benefits derive from improvement in the standards of magistrates and provincial court judges who are responsible for hearing approximately 95 per cent of all criminal code cases.

The original 1975/76 grant was for $22,500. That amount has increased over the years to $70,000 in 1985/86. The grant is conditional upon receipt of at least equal provincial contributions by the association.

Additional contribution funding is occasionally given to CAPCJ by the department for specific conferences to study proposed or enacted legislation.

BENEFICIARIES

The main beneficiaries of this program are the provincial court judges and magistrates.

EXPENDITURES ($000)

	83/84	84/85	85/86
Salaries and Wages	0	0	0
Other O&M	0	0	0
Grants	60.0	70.0	70.0
TOTAL	60.0	70.0	70.0
PYs	0	0	0

OBSERVATIONS

Given that the provincial court judiciary hears the vast majority of criminal code cases, there is value to the CAPCJ continuing education program in promoting uniformity of application of the criminal law throughout Canada.

In addition to direct contributions to the CAPCJ, the provincial governments cover the cost of judges' travel to conferences and seminars.

ASSESSMENT

While the need for a federal contribution to the CAPCJ could be questioned, especially given increasing levels of provincial contributions, in practical terms it would be extremely difficult for the federal government to withdraw or downgrade its support, in the view of the study team. While the federal grant was never intended to be a matching grant, in the sense that as provincial contributions increased so would federal, this has been the effect of the incremental increases since 1975/76.

There has been no evaluation of the effectiveness of the CAPCJ continuing education program. It is generally accepted, however, that the quality of the provincial court bench has improved over the last decade, largely as the result of the "professionalization" of the bench through the replacement of lay magistrates with lawyers in most jurisdictions. In the study team's view, the CAPCJ program has undoubtedly contributed somewhat to the quality of the bench. There may well be a possibility of expanding the jurisdiction of that bench and reduce some of the burden on the section 96 criminal courts.

While not identified as being an objective in giving this grant, it is recognized that the existence of the association and its annual conference also provides a mechanism for the department to receive input from provincial court judges into the criminal law review process. In the absence of the association, consultation may well be more expensive than the grant.

OPTIONS

The discontinuation of the grant program would negatively affect the quality of judicial education in Canada.

The study team therefore recommends to the Task Force that the government continue the program but undertake an evaluation of its effectiveness.

CONTRIBUTION TO CANADIAN SOCIETY OF FORENSIC SCIENCE
Department of Justice

OBJECTIVES

To cover the costs of the Canadian Society of Forensic Science to assess devices intended to measure the concentration of alcohol in the blood, pursuant to the Attorney General of Canada's responsibility to approve such devices for the enforcement of the impaired driving provisions of the criminal code.

AUTHORITY

The responsibility of the Attorney General to approve "instruments" and "containers" is established in subsection 237(6) of the criminal code. The use of the Breath Test Committee of the Canadian Society of Forensic Science to advise the Attorney General on which instruments to approve is not required by statute. The authority for the contribution derives from the annual Appropriation Acts.

DESCRIPTION

The Department of Justice has been providing the society with contributions since 1976. The society is a non-profit professional association of forensic scientists. One of its committees, the Breath Test Committee, at the request of the Department of Justice, tests and evaluates devices proposed for use in the enforcement of the impaired driving provisions of the code and advises the Attorney General as to the scientific acceptability of such devices. It is the responsibility of the Attorney General to actually approve the utilization of the devices.

The committee also sets operating standards for the use of breath testing instruments to ensure accurate readings for evidentiary purposes.

In addition to the annual contribution, in 1984/85 and 1985/86, the Research and Statistics Section of the Department of Justice contracted with the society to assess the forensic aspects of new breath sample containers which would be required if the as yet unproclaimed sections of the code passed by Parliament in 1969 and 1985 (Bill C-18) are to be proclaimed in force. The amount of the contracts to assess those types of containers was $19,272 plus DSS fees in 1984/85 and $3,568 plus fees in 1985/86.

The possibility exists of an additional contract of approximately $15,000 during the current fiscal year if a fourth container is ready for marketing. It was the assessment of the department that the cost of testing the new containers could not be covered under the amount of the contribution.

BENEFICIARIES

The most direct beneficiary of the program is the Attorney General of Canada. Arguably, all Canadians benefit to the extent that the contribution assists in the effective enforcement of impaired driving laws.

EXPENDITURES ($000)

	83/84	84/85	85/86
Salaries and Wages	0	0	0
Other O&M	0	0	0
Contributions	27.1	36.8	36.8
TOTAL	27.1	36.8	36.8
PYs	0	0	0

OBSERVATIONS

The responsibility for testing breath-test equipment has essentially been privatized.

In its assessment, the Treasury Board Secretariat concluded that the committee is the appropriate organization to fulfil this function.

ASSESSMENT

The study team concurs with the TBS assessment.

OPTIONS

The study team recommends to the Task Force that the government continue the program.

GRANT TO CANADIAN ASSOCIATION OF CHIEFS OF POLICE
Department of Justice

OBJECTIVES

The objective of the grant is to provide the Canadian Association of Chiefs of Police with financial resources to support the operation of the Law Amendments Committee in order to secure a continuing flow of advice on enforcement problems in the criminal law field.

AUTHORITY

This is a non-statutory program operated by the Department of Justice. Authority for expenditures derives from the annual Appropriation Acts.

BACKGROUND

At the request of the Department of Justice, the Canadian Association of Chiefs of Police's Law Amendments Committee reviews and provides, on an ongoing basis, comment on all new legislation and amendments relating to the criminal code. The annual $17,000 grant is intended to assist the committee in defraying travel and incidental costs associated with the review.

Given the degree of consultation necessary during the Accelerated Criminal Law Review process, the demand on the police community for their views regarding the proposed amendments has increased substantially. During 1984/85, legislative proposals on powers of the police, theft and fraud, search and seizure were brought forward. Current areas requiring review include amendments concerning pornography and prostitution, legal status of the police, search warrants, the procedures for identifying witnesses, classification of offences, arrest, the procedures following seizure and electronic surveillance.

As a consequence of the increased workload, the CACP has asked the Department of Justice to increase the annual grant; to date, this has not been done.

BENEFICIARIES

The major beneficiaries of this program are the police community and the Department of Justice as the grant permits consultation between the two on the content of the criminal code.

EXPENDITURES ($000)

	83/84	84/85	85/86
Salaries and Wages	0	0	0
Other O&M	0	0	0
Grants	17.0	17.0	17.0
TOTAL	17.0	17.0	17.0
PYs	0	0	0

OBSERVATIONS

Failure to consult adequately with the police community on criminal law amendments would have significant impact for the Department of Justice. The CACP represents the most convenient and appropriate forum through which to focus those consultations as it is the formal national association for all non-RCMP accredited police forces and maintains a high national profile.

The Treasury Board Secretariat, in its program assessment, observed that there appears to be duplication of other funds approved by Cabinet for the Review of the Criminal Code, whereby the federal agencies and department are to seek advice from the legal milieu in drafting changes and improvement to current legislation regarding law enforcement. Given the large number of grants and contributions, some of which are of relatively small in scale, Justice should, in the view of the study team, review these programs to eliminate overlaps and duplications.

ASSESSMENT

The Criminal Reform Fund, under its terms and conditions, is unable to provide for long term sustaining funding. The making of a grant is much easier administratively than is the making of the contribution agreement. There is no duplication or overlap between this particular program and others in the department.

Rather than increase the grant at a time when demand on the committee is high, it may be more appropriate to utilize the contribution program mechanism to augment CACP resources on an ad hoc basis. This would help ensure that federal resources are utilized effectively and efficiently.

OPTIONS

Discontinuing the annual grant would be counterproductive to the necessary consultation process with police on criminal law amendment.

The study team recommends to the Task Force that the government continue the program.

SUMMER CANADA STUDENT EMPLOYMENT PROGRAM
Department of Justice

OBJECTIVES

From the perspective of the Canada Employment and Immigration Commission, the objective of the program was to provide career-related jobs in federal departments and agencies for students. From the perspective of the Department of Justice, the program provided manpower for summer education and information programs for the public regarding legal matters.

AUTHORITY

This was a non-statutory program. The department derived its authority to operate it from the annual Appropriation Acts prior to 1984/85. In 1984/85, the Appropriation Act authorized the expenditure of funds by the Employment and Immigration Commission, rather than the Department of Justice.

BACKGROUND

The Summer Canada/Student Employment Program, begun in 1973, allowed the Department of Justice to sponsor public legal education and information (PLEI) projects throughout the country.

In 1984/85, responsibility for the grants portion of the program was transferred to the Employment and Immigration Commission. The Department of Justice continued to utilize one person-year to administer the allocation of funds.

In 1985/86, the program was abolished.

EXPENDITURES ($000)

	83/84	84/85	85/86
Salaries & Wages	38.9	41.5	0
Other O&M	0	0	0
Grants/Contributions	765.6	0	0
TOTAL	804.5	41.5	0
PYs	1	1	0

OBSERVATION AND ASSESSMENT

Given that the program has been abolished, no observations or assessments are made or options proposed.

CRIMINAL JUSTICE RESEARCH PROGRAM
Solicitor General Canada

OBJECTIVES

The objectives of the program are to:

- design and carry out research and evaluation studies which produce and accumulate information to inform decision-makers with respect to criminal justice policies, programs, services and legislation;
- interpret and disseminate the results of research, evaluation, and experimentation to provide technical advice to provinces and local agencies to improve criminal justice practices; and
- promote the use of research findings in criminal justice policy-making and support the development of Canadian criminal justice research manpower.

AUTHORITY

This is a non-statutory program operated by the Ministry of the Solicitor General. Authority for expenditures derives from the annual Appropriation Acts.

DESCRIPTION

The program developed from the research activities of the ministry and its agencies, taking its present form in 1974 with the establishment of the Research Division within the Solicitor General Secretariat. The program provides research support to the minister and deputy solicitor general, the secretariat and the ministry agencies.

Research is conducted through the four units of the research division: corrections; police and law enforcement; causes and prevention; criminal justice policy. Depending upon the size and complexity of the project, research is done through contracting out, or by way of a collaborative approach using program staff and contractors. These approaches vary over time and with tasks. The great bulk of the work, however, is contracted out. An in-house approach will use contractors for specific research assistance and most work undertaken is collaborative - a research officer works with a contractor to develop a project design, methodology, etc., obtains approval and manages the contract.

In-house work is normally done when factors such as speed, priority, particular expertise and security are present.

Depending upon the nature and cost of the project, contracts may be sole-sourced or go to tender through Supply and Services Canada. Projects over $50,000 are always sent for tender. Contracts are administered with 25 per cent of the agreed sum retained pending satisfactory performance. An inventory of researchers available for contract work is maintained by the Secretariat Program Branch Administration Unit.

Dissemination of research project results is by way of user reports to targeted groups of interested parties and as appropriate, internal reports, memoranda, etc. In addition, research findings may be published by the ministry in the form of technical reports or through conferences.

Research priorities are set through a committee system grouping representatives of the secretariat branches and the ministry agencies. The committees ensure that agency requirements and ministry initiatives, such as victims or crime prevention, are coordinated in an overall matrix fashion and research resources allocated.

The Department of Justice is also represented to ensure coordination of activities. Each research project has a steering committee with members from the relevant agency or department.

EXPENDITURES ($000)

	83/84	84/85	85/86
Salaries and Wages			
Other O&M	900	800	735
Capital	2,500	1,700	1,300
Grants and Contributions			
TOTAL	3,400	2,500	2,035
PYs	18	18	18

BENEFICIARIES

a. Decision-makers within the Ministry of the Solicitor General;

b. other decision-makers, federal, provincial and municipal authorities concerned with criminal justice; and

c. researchers in criminal justice.

OBSERVATIONS

The research program is driven by the policy needs of the ministry, both in terms of the minister and his deputy's immediate or short-term needs, and the requirements of the ministry agencies and the Solicitor General's approach to acting as an agent for change in the criminal justice system. The program must therefore respond to a variety of pressures, albeit within a coordinated ministry system. Equally, it must ensure a research product which is timely, relevant and of high quality for policy formulation.

The program is operated as a separate administrative unit from the ministry secretariat branches and agencies it serves. While the possibility exists of providing a research support capability internal to each branch or agency, it is considered that this would fragment the overall ministry research effort, risk diversion of longer term research resources into short term operational concerns and present coordination problems.

The committee system which defines and approves the research programs and projects is complex and reflects the need to coordinate ministry activities across a number of areas and decision centres. It is also an attempt to avoid duplication of effort between ministry elements and with other departments, in particular the Department of Justice and its research activities.

It is generally accepted by provincial contacts that research activity at the provincial level is limited in scope and tends to reflect operational needs. The federal government research effort in criminal justice is the major source of longer term, policy-based work in the field. The program has also assisted in the development and maintenance of a criminology research capacity in Canada both within government and the private sector.

ASSESSMENT

In the view of the study team, this program is an integral part of the Solicitor General ministry's policy development process. It does not duplicate other programs. Through a continuing effort and a formal consultation structure, it coordinates with research activity in other relevant federal departments.

No program evaluation exists and measured estimations of impact and effectiveness are not possible. In terms of efficiency, the program operates appropriately and steps have been taken to respond to observations made by a 1982 internal comprehensive audit and by the Auditor General in a 1983 report. The level of contracting out appears consistent with the fluctuating demand over any given time period.

If the program was not in operation, the ministry could not properly undertake its policy development and leadership function, compromising attainment of its objectives. Further, a major source of research information available for development of the criminal justice system in Canada would be lost and the national research capacity in this field diminished.

OPTIONS

Given the infrastructure relationship of the program to the Solicitor General's ministry operation and the negative effect discontinuing the program would have on the attainment of ministry goals and the criminal justice system generally, the study team recommends to the Task Force that the government consider continuing the program.

DEMONSTRATION PROGRAM
Solicitor General Canada

OBJECTIVES

Within the context of Research and Development, the demonstration program is designed to:

- test and evaluate, in conjunction with provincial, municipal and community organizations, innovative approaches to the resolution of complex and persistent criminal justice problems;
- produce, accumulate and disseminate knowledge and information to support decision-making for criminal justice legislation policies, programs and services;
- stimulate and promote information exchange concerning new concepts and emerging issues in criminal justice; and
- increase citizen and community participation in the resolution of criminal justice problems.

AUTHORITY

This is a non-statutory program operated by the Ministry of the Solicitor General. Authority for expenditure derives from the annual Appropriation Acts.

DESCRIPTION

The Demonstration Program began in 1968 and is administered by the Consultation Centre of the ministry secretariat. It offers funding up to a maximum of three years for a variety of experimental projects in criminal justice such as service delivery models, conferences, training aids and information kits.

Applicants may be individuals, groups, organizations or governments - municipal, regional or provincial. Applications may be made through one of the Consultation Centre's six regional offices or directly to headquarters depending upon whether they are local, regional or national in scope. Either a complete detailed project proposal or a short preliminary proposal may be submitted. For the latter, regional or Ottawa staff as appropriate will assist in preparation of a fully detailed proposal.

Proposals are screened by staff and a profile and recommendations are prepared for submission to the relevant ministry review committee. Committees are generally composed of representatives of the RCMP, National Parole Board, Correctional Service of Canada and ministry secretariat. Committees also include a Department of Justice representative.

The review committees ensure that the proposal is relevant in the context of the ministry's objectives, criteria and needs and recommend approval or rejection. Approval for funding may be given at different levels.

Selection criteria for projects require that they:

- be innovative;
- further ministry objectives and Consultation Centre priorities;
- be developed with relevant federal, provincial, municipal and voluntary agencies;
- be carried out in not more than three years;
- exhibit a high potential for local support to ensure continuance after the initial phase; and
- be developed in a systematic manner, be well-documented and have an evaluation component.

Priority is given to projects involving citizen participation at the policy and direct service levels.

Upon approval of the review committee's recommendation, applicants are contacted by regional or national staff and informed of the decision. The period between application and announcement of decision varies considerably but on average is between three and five months. Applications are received at any time with no fixed deadline dates.

The program budget is allocated among the various initiatives, such as victims, crime prevention, and according to the priorities for activities between and within those established by the ministry as part of its annual planning exercise. Budget control and program management for each initiative is the responsibility of a national program consultant located in Ottawa. The regional staff normally play a communications and project-monitoring role reporting for these purposes to the national consultant.

BENEFICIARIES

a. Provincial regional and municipal governments (police forces), and individuals; and

b. non-governmental organizations working in the criminal justice field.

EXPENDITURES (\$000)

	83/84	84/85	85/86
Salaries & Wages	856	911	1136
Other O&M	650	575	1056
Capital			
Grants and Contributions	1,473	1,323	2,614
TOTAL	2,979	2,809	4,806
PYs	24	24	26

OBSERVATIONS

The demonstration program offers the ministry a flexible vehicle for experimentation and dissemination in developing new approaches to criminal justice and services through its various initiatives. The program's degree of flexibility and its Ottawa coordination may, however, cause some difficulty for regional staff in assessing a project's chances of support since budgets are centrally controlled. There is some feeling perhaps more decentralization of budgets or specific regional allocations would be desirable.

The program has, because of its direct support of projects involving local governments, police agencies and community groups, raised the concerns of provincial authorities. The latter consider the activities supported by the program directly related to the administration of justice and, therefore, a federal intrusion into an area of provincial jurisdiction. Also of concern is the demand for services which may be generated by demonstration projects and for which federal funding is available for up to only three years.

In Alberta and Quebec, joint committees have been established with provincial justice and Solicitor General representatives to ensure information exchange and project control. In other provinces communication is less structured and provincial concerns perhaps less well addressed.

Plans are now being developed by the ministry to establish committees with all provinces to provide a formal, ongoing mechanism for joint federal/provincial consideration of demonstration program activities and projects. It should be noted that provincial officials contacted did agree that few resources for experimentation and information dissemination were available at the provincial level and that, in general, such activity would be much less without a federal program.

ASSESSMENT

While program evaluations which include study of demonstration project support are at the final stage for the ministry's victims and crime prevention initiatives, no overall evaluation for the demonstration program as such has been done. It is, therefore, difficult to assess its impact and effectiveness.

In recent years, however, steps have been taken to more closely integrate the demonstration program with the secretariat policy development function. Evaluation components are required for any projects supported, a project evaluation responsibility allocated to the secretariat Statistics Division and an evaluation committee established with representatives from the Statistics and Research Divisions and the Consultation Centre. The Consultation Centre has also been more closely linked to the secretariat research planning process. This effort should be continued in the view of the study team.

The program does not duplicate other programs and through cross-membership on project review committees with the departments of Justice and Health and Welfare, ensures coordination of related activities. There is no duplication with provincial programs and projects must normally, for approval, involve some form of local or provincial support.

Nonetheless, in some cases, provincial justice ministries may not always be aware of projects involving local governments, police forces, community groups or other ministries. The smooth operation of the program depends upon the communication channels, formal or informal, established between the Consultation Centre regional offices and provincial officials and the individuals involved.

In the study team's opinion, there is little doubt that the program is problematic for justice ministries for reasons of jurisdiction and stimulation of demand for services. There is a need for formal mechanisms to allow joint federal/provincial coordination of development program activities.

It is clear that the federal government has, by virtue of its responsibility for the criminal law and generally as a national government, a leadership role in the criminal justice system. The exercise of this role requires the collaboration of provincial authorities where federal concerns for and action towards development of new or improved services are concerned. Since there is general agreement that significant resources for innovation are available only at the federal level, termination of this activity would likely negatively affect efforts to improve justice services to the public. However, in the view of the study team, the demonstration program must, if it is to continue, ensure provincial collaboration and, through regular and sustained project evaluation, an integration with the policy development process within the Solicitor General's department.

OPTIONS

In the study team's view, the status quo is unsatisfactory with regard to effective collaboration with provincial authorities and the full implementation of a project evaluation process.

Termination of the program would remove a federal/provincial irritant but could end the major vehicle for service improvement and innovation currently available. Potential findings for policy development could be lost and there could be considerable criticism from community groups, particularly in social service areas such as victim services.

Continuing the program with mechanisms for provincial collaboration and close linkage with the research and policy development process within the ministry would place the program within the context of a national approach to innovation in the criminal justice system.

The study team recommends to the Task Force that the government consider the following:

1. Maintaining the program.
2. Establishing a joint committee with every province, where not already existing, to coordinate program activities in each province.
3. Streamlining procedures for project approval towardtoward reducing the period between submission of an application and notification of the results.

SUSTAINING CONTRIBUTIONS TO CANADIAN CRIMINAL JUSTICE RESEARCH CENTRES
Solicitor General Canada

OBJECTIVES

To provide support for Canadian criminological research centres to enable them to:

- carry out programs of long-term research in areas of importance to the ministry;
- disseminate effectively the results of criminological research; and
- develop Canadian criminological research manpower.

AUTHORITY

This a non-statutory program operated by the Ministry of the Solicitor General. Authority for expenditure derives from the annual Appropriation Acts.

DESCRIPTION

The contributions program was introduced in 1969 to respond to a shortage of researchers, a government policy requiring 70 per cent of research to be contracted out, and the end of Ford Foundation support to criminology centres at the University of Toronto and the Université de Montréal. The possible collapse of the two centres would, in its view, have deprived the ministry of major sources of contract researchers.

Since its initial support of the Toronto and Montreal centres, the program has expanded to cover centres at Simon Fraser University, the universities of Regina, Alberta and Ottawa, Dalhousie University and the University of Manitoba. The centres agree to use specific portions of the ministry contribution to:

a. prepare focused research reports in selected areas mutually agreed-upon by the centre and the ministry;

b. develop research manpower; and

c. sustain the ongoing operation of the centre (administrative costs, salaries, etc.) relative to the objectives defined in the agreements such as dissemination of research results.

The universities concerned agree to ensure that centres will receive matching funds (i.e. funding at least equivalent to that provided by the ministry) either from within the university or from other sources.

Focused research as used by the program refers to long-term research which examines fundamental issues in terms of their policy implications. A number of small inter-related studies can be carried out under the umbrella of a specific focused research theme. Examples of research topics are the media and the criminal justice system; the policy implications of research on the operation of parts of the criminal justice system.

Development of research manpower may be accomplished by a variety of mechanisms including awards to graduate students and the operation of graduate programs, assistance with research costs, etc. Centres are free to take the approach most appropriate in light of their circumstances.

Dissemination of research results is through symposia, workshops and conferences put on by the centres. Proceedings of these events as well as findings of research conducted by centre members are published by the centres.

Funding levels reflect:

- the length of time various centres have been supported by the ministry;

- the scope of a centre's operation and thus the extent of its research capacity;

- the presence of graduate students (especially doctoral) enrolled in criminology; and

- support of criminological research in the major regions of Canada at a level which approximates the population of these regions relative to the population as a whole.

Contribution agreements normally are for 36 months. Current amounts given annually are:

Dalhousie University	$ 25,000
Université de Montréal	130,000
University of Ottawa	30,000
University of Toronto	105,000
University of Manitoba	30,000
University of Regina	25,000
University of Alberta	25,000
Simon Fraser University	55,000

Universities must submit annually certified financial statements itemizing use of ministry- and matching-funds, along with copies of centre annual reports and conference proceedings. Six months before expiry of an agreement a university must report upon progress toward objectives specified in the agreement.

Findings of ministry-assisted research or conference proceedings may be published with appropriate acknowledgements and disclaimers. Focused research reports may be published by either the university or the ministry, subject to mutual agreement on publication modalities.

Payment of amounts under the agreements is made on a quarterly basis following receipt of a statement of expenditures by the ministry. Although contribution agreements are for a 36-month period, they are subject to annual approval of funds by Parliament.

BENEFICIARIES

Criminology research centres at the above-listed eight universities.

EXPENDITURES **($000)**

	83/84	**84/85**	**85/86**
Salaries and Wages	15	15	25
Other O&M	10	10	10
Capital			
Grants and Contributions	400	400	425
TOTAL	425	425	460
PYs	.25	.25	.5

OBSERVATIONS

This is a research infrastructure program which assists the development and maintenance of a national research capacity in criminology and related fields. Centres provide training of human resources, research output and are elements of a research communication network. They range from well-established institutions, such as in Toronto and Montreal, with extensive, well-developed programs and activities, to new institutions at Dalhousie and Manitoba.

The degree to which centres are linked to or used by the local criminal justice communities appears to vary with each institution. The ministry does not require centres to offer services to the wider community but hopes their expertise will be used and this is the case. Nonetheless, the centres are primarily academic institutions within universities whose basic vocation is research and knowledge building rather than active community service.

In supporting the centres, the ministry considers it serves its own needs by ensuring a pool of qualified individuals available for employment or research contracts. As well, the focused research project of each centre provides findings on topics of specific interest and, of course, research done through the centres generally may be of value to the ministry.

The matching grant aspect of the program is a means of ensuring university support of and involvement with the centres and possibly attracting other non-university funds. Ministry funds have been "leveraged" to obtain more resources from elsewhere. However, newer centres may find difficulty in obtaining matching funds although the ministry has been generous in its interpretation of matching.

The degree to which the research agenda in the criminal justice area may be influenced by the Solicitor General's support of centres is a question which has been raised. To the extent that any source of research funding will influence researchers and their choice of topics, no doubt an effect is present, particularly where funding possibilities are few as in Canada. The extent of the effect is not verifiable in this case.

ASSESSMENT

No evaluation of this program has been undertaken and therefore, an assessment with regard to effectiveness, using the Comptroller General's guidelines, is not available. In terms of efficiency, the program appears to operate appropriately and is well viewed by academic contacts. The three-year funding cycle, common to all centres, allows for standardization of procedures and relatively low administrative costs.

In the view of the study team, the program has undoubtedly assisted in the development of a Canadian research capacity in criminology since its inception. However, the degree to which it has developed a capacity that was already building through general expansion of the university system and research support through the Canada Council and, later, the Social Sciences and Humanities Research Council of Canada (SSHRC) as well as the Quebec granting agency, FCAR, is not measurable. It is probable that the funds available from the program have helped institutions and individual researchers attract other funds and provided "critical masses" of research funding. More importantly, perhaps, assistance to centres has helped criminology as a discipline achieve focus and status as well as research funding.

The linkage of the program to the ministry's own research and development effort and requirements are direct insofar as focused research projects are undertaken by centres whose results are useful. Other linkages stem from helping to ensure the existence of a pool of research expertise which can be drawn upon and are thus indirect.

In the opinion of the study team, the program is a logical component of the ministry's overall approach to helping to ensure a Canadian research capacity in criminology in order to serve its own needs and accomplish its goals. However, given the limited direct linkage and the research capacity in criminology now achieved in universities, the program's existence does not appear crucial to the ministry's research effort.

The program provides national research capacity infrastructure support in criminology. Another federal agency, the SSHRC, also provides support to criminology research although not specifically through a centres program. The Study Team on Education and Research has examined this program and proposed that it be terminated on the grounds of duplication with SSHRC support and a lack of evaluation of the program's impact and rationale.

OPTIONS

Termination of the program would likely reduce the efficiency of the ministry's communication with the research milieu. While the larger, long-established centres could probably continue without the program's support, newer and smaller centres might find more difficulty in doing so depending upon local circumstances and fund-raising ability.

Ending the program would also mean funds would be withdrawn from criminology research and training which, given pressures on other sources of support and general budget restraint, could result in an overall reduction in research activity. This could be intensified if matching funds were lost as a result of ending the federal contribution. Considerable criticism of the federal government could be expected from the research community and the administrations of those universities affected.

However, the ministry's research effort would not be directly affected by termination of the program and centres might well find alternative sources of support. Furthermore, SSHRC does now provide research funding in criminology.

Transfer of the program resources to SSHRC would benefit the secretariat, allowing the program to continue while integrating it into the federal agency responsible for general research support in the human sciences. Any such transfer should involve policy input from the Solicitor General and designation of funds for criminology research. Some simplification would be achieved together with an increase in coherence of federal non-contract support of criminology research.

The study team recommends to the Task Force that the government consider ending the program of sustaining contributions to Canadian Criminal Justice Research Centres, as of March 31, 1987.

The resources allocated to this program for contributions could be maintained in the Solicitor General ministry budget after April 1, 1987, but be made available annually to the Social Sciences and Humanities Research Council of Canada for a strategic program in criminal justice research.

SOLICITOR GENERAL'S FUND FOR INDEPENDENT RESEARCH
Solicitor General Canada

OBJECTIVES

To provide financial support and technical expertise for a limited number of relatively small research projects in order to:

- develop Canadian criminological research manpower;
- promote innovative research in areas of concern to the ministry; and
- support research designed to develop practical responses to criminal justice problems.

AUTHORITY

This is a non-statutory program operated by the Ministry of the Solicitor General. Authority for expenditure derives from the annual Appropriation Acts.

DESCRIPTION

The program was introduced in 1984 to complement existing ministry research support programs of contracts for specific projects and sustaining contributions to university criminology centres. It is designed to assist the undertaking of research projects by covering expenses such as computer time, photocopying, typing, research assistance and similar costs up to a maximum of $10,000 non-renewable. Salaries for those already on salary and overhead costs are not eligible under the program. Projects may take up to three years.

Applicants must be Canadian citizens or permanent residents and not normally associated with a criminology centre supported by the ministry. Topics proposed for funding must be relevant to the Canadian criminal justice system.

The closing date for applications is October with results announced early in the new year. Applications are screened by the Secretariat Research Division and applicants' identities removed before transmission to a committee composed of the directors of the criminology centres at the University of Toronto, Simon Fraser University and the Université de Montréal.

Each application is sent by the committee to two external assessors for an opinion as to merit. Applications and assessors' comments are subsequently considered by a selection committee consisting of the three criminology centre directors together with the Director General, Research and Statistics, and the Director, Research Division, ministry secretariat.

In selecting among applications some priority is given to projects which are of high quality but which may not fit the immediate priorities of government departments funding research. Work which is or should be part of the evaluation or operation of governmental agencies is of secondary priority.

Recommendations of the selection committee are normally forwarded to the Assistant Solicitor General, Program Branch, for approval, although they may be sent to the minister. Upon formal approval applicants are notified and a news release is issued.

Awards are in the form of contributions and 85 per cent is paid at the time of signing the contribution agreement. The remaining 15 per cent is paid upon acceptance by the ministry of the final report of a project.

Final reports consist of a brief description of the research and its results or a published report (e.g. a reprint of an article that has been accepted or published by a referred journal). Reports are reviewed by the members of the selection committee. A statement of expenditure must also be submitted with the final report.

BENEFICIARIES

Those Canadian researchers in criminology who receive awards and are not normally associated with the criminology centres supported by the ministry of the Solicitor General under its program of Sustaining Contributions to Canadian Criminal Justice Research Centres.

EXPENDITURES ($000)

	84/85	85/86
Salaries and Wages	10.0	25.0
Other O&M	25.0	15.0
Capital		
Grants and Contributions	135.0	135.0
TOTAL	170.0	175.0
PYs	.2	.5

OBSERVATIONS

The program provides a means to encourage new approaches to existing problems in criminal justice and the definition and exploration of different research paradigms. From this perspective, the ministry is prepared to accept projects that, while of high quality, are also of high risk in terms of useful payoff in research findings for funds expended. The program is thus a means of escaping the necessarily pre-determined requirements and priorities for ministry research support using the contract route while assisting its general research effort in criminal justice.

Applicants under the program must not be associated with the eight university criminology centres funded by the ministry. This is seen as avoiding "double support" of the same researchers as well as expanding the pool of researchers known to the ministry whether within or outside the university sector. Such persons may be used for contract work in future but, in any event, diversification of contacts with the relatively small Canadian criminology research community is considered desirable per se.

ASSESSMENT

As the Treasury Board assessment notes, the program is too new for any evaluation of its effectiveness. From the viewpoint of efficiency, it appears to work well with a turnaround time from application to announcement of result that compares favourably with similar programs administered by other organizations.

The administrative cost of the program is minimal and is undertaken by existing infrastructure. Also, a significant part of the operation of the program is done by university criminology centres and academics who are not paid for this activity.

Financial and activity reporting procedures are in place and the retention of 15 per cent of awards is a useful control mechanism. The submission of research reports to the selection committee provides an appropriate review of results achieved by individual award holders and an ongoing if approximate means of gauging the program's impact.

The program is well viewed according to academic contacts and assists in developing the national research effort and capacity in criminology. It helps provide, in addition, diversification of funding sources - seen as desirable by the university research milieu - and allows the private sector to obtain support.

In the view of the study team, the program is a logical component of the ministry's overall approach to helping to ensure a Canadian research capacity in criminology in order to accomplish its own goals. However, if the program did not exist, the effect on the ministry's research effort would not be significant. It is a useful addition rather than an essential part, in the study team's view.

An alternative source of federal funding for independent research in criminology is provided by the Social Sciences and Humanities Research Council of Canada. The council's support, however, is for independent research in general, so criminology applications must compete for limited funds with those from all other disciplines. The Study Team on Education and Research has reviewed this program and recommended its termination as a duplication of SSHRC activity with minimal impact on research.

OPTIONS

Termination of the program would not directly affect the secretariat's research effort. The impact upon the overall national research capacity in criminology would not be great and SSHRC provides federal research support. Criticism could, however, be expected from the criminology research community.

Transfer of funds to SSHRC would permit the program's benefits to the secretariat to continue while integrating it into the federal agency responsible for general research support in the human sciences. Any such transfer should involve policy input from Solicitor General and designation of funds for criminology research, possibly through a strategic program. Some simplification could be achieved together with an increase in coherence of federal non-contract support of criminology research.

The study team recommends to the Task Force that the government consider the following:

1. Ending the Solicitor General's Fund for Independent Research Program as of March 31, 1987.

2. Maintaining the resources allocated to this program for contributions in the Solicitor General ministry budget after April 1, 1987, but making them available annually to the Social Sciences and Humanities Research Council of Canada for a strategic program in criminal justice research.

3. Directing the Social Sciences and Humanities Research Council of Canada to plan, in conjunction with the Ministry of the Solicitor General, the Department of Justice and appropriate provincial authorities, a strategic program in criminal justice to be implemented as of April 1, 1987.

PROGRAM OF GRANTS AND SUSTAINING CONTRIBUTIONS TO NATIONAL VOLUNTARY ORGANIZATIONS INVOLVED IN CRIMINAL JUSTICE

Solicitor General Canada

OBJECTIVES

The program is designed to:

- promote and support the development of an effective voluntary sector to participate in criminal justice issues;
- stimulate and increase enlightened public participation in the resolution of criminal justice problems;
- strengthen the capability of the voluntary sector to deliver criminal justice services; and
- provide the ministry with an effective consultation mechanism to discuss major policy and program issues.

AUTHORITY

This is a non-statutory program operated by the Ministry of the Solicitor General. Authority for expenditures derives from the annual Appropriation Acts.

DESCRIPTION

This program is administered by the Consultation Centre of the ministry secretariat and provides sustaining funding to national organizations in the criminal justice field. It grew out of consolidation of previous ministry core funding arrangements in 1983 and Cabinet approval in early 1984.

Organizations seeking support must be national, as evidenced by a national office and activities or members in a majority of provinces or regions. Their scope must be nationwide, or in the process of becoming so, and their objectives and activities complementary to those of the ministry.

Applications are processed in Ottawa for eligibility. If necessary, Consultation Centre staff assistance is available to organizations in preparing an application. Information to be supplied by organizations includes details of objectives, methods of functioning, sources of funds, proposed budget and other relevant material.

Applications are reviewed by the Consultation Centre Management Committee and then forwarded to the Ministry Committee on National Voluntary Organizations with comments and recommendations. The ministry committee is composed of representatives from secretariat branches, the National Parole Board and the Correctional Service of Canada with observers from the RCMP and CSIS. It examines applications in the context of the ministry's criteria, objectives, needs and resources, and makes a recommendation to the minister.

Funding may be in the form of grants or contributions. Grants are given for core funding of established organizations. Sustaining contributions are used to support organizations which are developing or new to the program. Ministry support may extend to 75 per cent of the organizations' core funding. At present, some 13 organizations receive funding - 10 by grants and three through contributions.

Organizations are supported for a five-year period at the end of which a full evaluation will be carried out to determine if funding will be continued. Those organizations now receiving funds have been evaluated.

Grants are paid annually at the start of the fiscal year. Organizations must submit each year a copy of their annual report and an audited financial statement. Contributions are paid according to a schedule of projected cash needs submitted by each recipient upon receipt of a financial report. Unspent monies are returned to the ministry.

A joint Ministry/Voluntary Organizations Committee has been struck to provide a framework for advice on the development and operation of the program, policy for voluntary sector support and more general matters of Solicitor General voluntary sector relations.

BENEFICIARIES

National voluntary organizations in the criminal justice field, namely:

John Howard Society of Canada	686,000
Elizabeth Fry Society of Canada	602,650
St. Leonard Society	120,400
Salvation Army	90,000
Canadian Training Institute	95,000
Seven Step of Canada	60,000
Prison Acts Federation	62,000
Church Council on Justice and Corrections	55,000
Canadian Criminal Justice Association	240,000
National Associations Active in Criminal Justice	68,000
Association des Sciences de Réhabilitation	145,000
Canadian Association of Chiefs of Police	50,000
Société Canadienne pour la justice Pénale	240,000

EXPENDITURES ($000)

	83/84	84/85	85/86
Salaries and Wages	65	65	58
Other O&M	10	10	12
Capital			
Grants	1,458	1,079	2,555
Contributions			
TOTAL	1,533	1,154	2,625
PYs	1.2	1.2	1.2

OBSERVATIONS

The ministry has succeeded in putting into place a stable policy base for its support and overall relations with the national voluntary sector. It has now begun the process of operationalizing this base through the program and the joint Ministry/Voluntary Sector Committee.

ASSESSMENT

The program is new and evaluation of its impact and effectiveness awaits the passage of time. However, its administration is simple and, relative to funds distributed, not overly costly. Personnel time is expended on liaison activities with organizations as much as on relations with the ministry on program matters which is usual in this type of activity.

It is the view of the study team that, given the federal government's national role in the justice system the program is an appropriate activity in terms of jurisdictional responsibility and does not duplicate other programs. A stable, well-functioning voluntary sector provides services, development and delivery, opportunities for experimentation and channels to dissemination of results, communication between government and citizens, increased public awareness about and definition of criminal justice issues. Moreover, if, in particular, services were not provided by voluntary organizations either the criminal justice system's functioning would suffer (and thus society generally) or the state would have to provide such services directly and likely at higher cost.

In terms of the ministry's own goals and activities, the program provides a firm base for relations with the voluntary sector, and a direct support to its policy development and research role the study team believes.

OPTIONS

Termination of the program would mean disruption of services to the justice system and to its community backing; it would probably increase justice costs and call forth considerable public criticism. Given the need for a strong voluntary sector and the benefits accruing to governments and society, the program should be maintained. However, given the program's activities, the person-year allocation may be excessive.

The study team therefore recommends to the Task Force that the government consider continuing this program and directing that a review of the person-year allocation be undertaken by the department.

EMPLOYMENT PROGRAM
Solicitor General Canada

OBJECTIVES

The objectives of the Criminal Justice Employment Development program are to:

- provide training, work experience and career opportunities for youth, women, Natives and male and female ex-offenders seeking entry or re-entry to the job market;

- facilitate the transition of target groups from unemployment or a training or educational milieu to the permanent work force;

- stimulate positive interaction and attitudinal change between target groups and the criminal justice system;

- facilitate contributions by target groups to their communities and enhance community support for, and participation in, the criminal justice system;

- improve Canadian criminal justice research capability;

- enhance ministry efforts in priority areas such as law enforcement, crime prevention, victims services, Natives, young offenders, women in conflict with the law, and corrections; and

- promote crime prevention through social development.

AUTHORITY

This is a non-statutory program operated by the Ministry of the Solicitor General. Authority for expenditures derives from the annual Appropriation Acts.

DESCRIPTION

The program allows the Ministry of the Solicitor General to utilize the Challenge '85 program of Employment and Immigration Canada to provide summer employment within the criminal justice field for students and youth. The program consists of a project component and an internship component administered through the ministry secretariat Consultation Centre and its six regional offices.

Interns are placed within the secretariat and the ministry agencies, RCMP, National Parole Board, Correctional Service of Canada and the Canadian Security and Intelligence Service. Projects are developed through the regional offices and recommended for support to Employment and Immigration which exercises financial and administrative control. In 1984/85, Employment and Immigration undertook direct control of these job creation funds. No project activity was undertaken in 1985/86, however; funds were obtained to continue the internship program in the ministry. Employment and Immigration funds also continue to support the RCMP supernumeraries program which allows the force to provide jobs as special constables for the summer period.

The program has also been a vehicle in the past for implementation of other Employment and Immigration job creation programs involving ex-offenders and other target groups. At present, only the summer interns and RCMP supernumerary programs are operating and the ministry is examining a year-round employment program of its own in light of the possibility of Employment and Immigration withdrawal from funding federal departments.

EXPENDITURES ($000)

	83/84	84/85	85/86
Salaries and Wages	125	125	125
Other O&M	58	62	12
Capital			
Grants and Contributions	4,540	2,600	1,730
TOTAL	4,723	2,787	1,822
PYs	4	4	2.5

BENEFICIARIES

a. Municipal governments (police forces);

b. non-governmental organizations and working groups in the criminal justice system; and

c. unemployed individuals.

OBSERVATIONS

None

ASSESSMENT

No evaluation exists of the Solicitor General program and measured assessment of its impact and effectiveness is unavailable. Employment and Immigration is in the process of doing a general evaluation of the Challenge '85 program. However, since jobs have been created, support, as Treasury Board notes, has been given to Employment and Immigration's objectives.

In terms of the Ministry of Solicitor General's goals, the program has brought youth and the wider community into contact with the justice system in a positive manner. Furthermore, the study team believes it has allowed the ministry to pursue its agent of change role in criminal justice through a variety of projects linked to its overall initiatives.

OPTIONS

This is primarily a job-creation program and has provided employment. If the overall program is continued by Employment and Immigration, the Solicitor General component could be maintained as an appropriate delivery mechanism.

The study team recommends to the Task Force that the government consider continuing the Solicitor General's Employment Program, if a similar government-wide program is in place in subsequent years, subject to the findings of the evaluation of Employment and Immigration Canada's Challenge '85 Program.

PUBLICATIONS PROGRAM
Solicitor General Canada

OBJECTIVES

The objective of this program is to ensure that knowledge and information from ministry criminal justice research and development is disseminated effectively to various audiences including the Solicitor General and Deputy Solicitor General, the branches of the secretariat, the agencies of the ministry, policy and program decision-makers across the justice system and the general public.

AUTHORITY

This is a non-statutory program operated by the Ministry of the Solicitor General. Authority for expenditures derives from the annual Appropriation Acts.

DESCRIPTION

The Publications Program is operated by the Communications Group of the ministry secretariat which is responsible for all official secretariat publications. The program ensures:

- editing of all reports submitted for publication;
- arranging for design, artwork and graphics;
- distribution;
- arranging for reprints;
- responding to requests for publications; and
- maintaining mailing lists.

Publications include: technical reports on research or demonstration projects undertaken by or through the secretariat; ongoing series relating to criminal justice; Liaison, a magazine-format publication produced 11 times a year; bulletins and other miscellaneous publications. The program also assures publication of the ministry's annual report as well as that of the Correctional Investigator. On average, some 25 publications (excluding research reports) are processed annually.

Publication costs are normally charged to the division originating the publication which is also responsible for verification of material. Items such as the ministry's annual report and its own publications are charged to the Communications Group. Publications are primarily distributed free of charge.

Publications originating from the Programs Branch must be approved by its Dissemination Advisory Committee, as well as the Assistant Deputy Solicitor General, before submission to the Deputy Solicitor General. Approval of publications has been delegated by the minister to his deputy.

Apart from technical reports, research findings are also disseminated through user reports. Unlike technical reports, user reports are not formal publications but simply findings of a given project distributed to a defined audience with no official imprimatur. After approval for release at the division level, the program provides a cover, serial number and distribution if required.

Distribution of publications is contracted out. Printing services are obtained through the Department of Supply and Services either directly or by tender.

BENEFICIARIES

a. Federal and provincial government decision-makers and professionals in criminal justice;

b. non-government organizations and professionals working in the criminal justice system; and

c. general public.

EXPENDITURES ($000)

	83/84	**84/85**	**85/86**
Salaries and Wages	80	85	60
Other O&M	200	200	100
Capital			
Grants and Contributions			
TOTAL	280	285	160
PYs	2	2	2

ASSESSMENT

The program has not been evaluated and thus systematic information concerning its effectiveness is not available. A feedback mechanism through user response cards was used in one serial publication and periodic reviews of mailing lists are done. At the technical level, the program appears to function efficiently.

A publication capability for any research and development operation is vital since research findings not disseminated are of no value. There seems little question in the study team's view, therefore, that the secretariat needs a publication program to function effectively and fulfill its role in support of ministry goals. It may be, however, that the publication program could be undertaken by the private sector.

Furthermore, government regulations inhibit cost recovery of research publications. The procedures to be followed and the expense of production are prohibitive for orders of 50 to 1,000 copies. This acts as a deterrent to the effective dissemination of research findings and revenue gathering.

OPTIONS

The study team recommends to the Task Force that the government consider the following:

1. Maintaining the program.

2. Contracting out of the program be examined.

3. Government cost-recovery procedures for small publication orders be simplified.

NATIONAL VICTIMS RESOURCE CENTRE
Solicitor General Canada

OBJECTIVES

To identify relevant victim-related information in the following areas:

- bibliographic (including books, reports, journals, pamphlets, etc.);
- audio-visuals;
- victim service programs; and
- research and development projects.

To collect and code (including abstracting and indexing) this information and to enter it into the centre's computer database.

To provide reference and referral services to its user groups which include but are not limited to: victim service and self-help groups, federal, provincial and municipal officials, criminal justice, social service and health care professionals, researchers and educators.

To develop a network of information suppliers and consumers in the victim area to promote information sharing.

To ensure continuing development of the centre's services and capabilities in both official languages and the updating of its information base.

To ensure that users are familiar with the centre's services and systems.

AUTHORITY

This is a non-statutory program operated by the Ministry of the Solicitor General. Authority for expenditures derives from the annual Appropriation Acts.

DESCRIPTION

The program developed from Cabinet's 1981 authorization of a joint Solicitor General/Justice enhanced initiative for victims of crime. At this point the Victim Resource Centre was to provide easily accessible information for ministry use. As a result of a Federal/Provincial Task Force on Victims of Crime recommendation and Cabinet authorization in 1984, the victims initiative was continued for a further two years. From this base, the National Victims Resource Centre was established to support effective exchange of research and development-based information and expertise among organizations and individuals involved in the development and delivery of victims programs and services. The centre searches out and acquires information, catalogues it into the ministry library, codes and inputs it into a computer database and maintains it in files or on the library shelves. The centre database has some 1,500 bibliographic records, information on over 200 victims service programs operating in Canada, detailed records of 150 victims research and demonstration projects and information about more than 600 films and videotapes available in Canada related to victims topics.

Service to clients is available through personal visits (by appointment), mail and toll-free telephone lines. Detailed information can be given by mail or visits and telephone callers can obtain:

- computer printouts of bibliographic, project and service programs information together with details of audio-visual materials and where to obtain them;

- photocopies of non-copyright information materials;

- books from the ministry library through inter-library loan; and

- assistance in obtaining information about establishment and operation of victims programs.

At this time the centre has not, given its experimental status, made a strong effort to publicize its operation. The primary clientele are agencies working for or with victims of crime rather than victims themselves. However, individual victims who contact the centre are assisted but it is not a referral service.

The centre, unless continued, will cease operations at the end of 1985/86.

EXPENDITURES ($000)

	83/84	84/85	85/86
Salaries and Wages			45
Other O&M	110	110	250
Grants and Contributions			
TOTAL	110	110	295
PYs			1.25

BENEFICIARIES

a. Government and non-government professionals and practitioners dealing with or providing services to victims at the national, provincial and local levels;

b. general public; and

c. victims of crime.

OBSERVATIONS

The centre is operating on an experimental basis until March 31, 1986. Its future has been considered by the Federal/Provincial Working Group on Victims. The centre is also included in the evaluation of the victims initiative being undertaken by the Secretariat Audit and Evaluation Division.

The centre is linked to the Health and Welfare department's Clearing House on Family Violence. In the longer term, program managers see the need for a federal mechanism for coordinating and rationalizing dissemination of victim-related information. The centre itself has an advisory group with secretariat, Health and Welfare, Department of Justice and RCMP members.

The future location of the centre and its relationship to the ministry library and documentation centre will require examination and clarification in the light of the library's future role and operation. As noted in the ministry library program profile, the matter of resource centres separated from the library should be addressed.

ASSESSMENT

The centre offers a useful service and information resource to the criminal justice community. It does so without arousing provincial government concern and, indeed, its establishment reflects federal/provincial agreement. The victims-program evaluation has reported positively on the centre and recommends it continue as does the Federal/Provincial Working Group. The study team believes it is an important element within the victims-program initiative undertaken by the federal government.

While the centre requires continued federal support, its future location and operation should be examined in the view of the study team. Advantages in resource utilization may indicate maintaining the centre within the secretariat and the ministry library but other considerations could lead to operation by the voluntary sector or the Canadian Centre for Justice Statistics, or by some other similar nationally consitituted body. In the latter case, the centre would be identified more clearly as a national resource and would have federal/provincial direction of its activities. A voluntary sector approach would also help ensure a national identity for the service, more closely involve service agencies and possibly achieve economies.

There do not appear to be arguments for termination of the program. The study team believes it is operating effectively and, given service levels at this developmental stage, efficiently. Furthermore, it is a logical part of the overall federal victims initiative program activities and is contributing to achievement of this program's objectives.

OPTIONS

The study team recommends to the Task Force that the government consider continuing the program but examine its future location.

MINISTRY LIBRARY
Solicitor General Canada

OBJECTIVE

The library is designed to collect and disseminate information to meet the requirements of the ministry by:

- maintaining a collection of 25,000 volumes, 300 sets of periodicals and 40,000 documents on microfiche dealing with criminal justice topics such as victims of crime, crime prevention, young offenders, Natives, law enforcement, corrections and parole. In addition, the library includes materials on management, government publications, bibliographies, indexes and abstracts; and
- providing access to a variety of data bases such as the National Criminal Justice Reference Service to ensure that clients receive information from other sources in an immediate, cost-effective and timely manner.

AUTHORITY

This is a non-statutory program operated by the Ministry of the Solicitor General. Authority for expenditures derives from the annual Appropriation Acts.

DESCRIPTION

The ministry library grew out of a 1969 amalgamation of the headquarters libraries of the National Parole Board (NPB) and the Correctional Service of Canada (CSC) following creation of the ministry in 1966. To avoid duplication, collections were amalgamated and services instituted on a ministry-wide basis. The RCMP, however, given its separate location and security requirements, maintains its own library.

The two main tasks undertaken relate to information services and collection building and control. Information services include:

- responses to user requests, including automated reference searching using DIALOG and QL systems which provide access to Canadian and foreign sources;

- showing clients how to use the library to obtain information;
- loan of materials;
- inter-library loans; and
- advice on relevant literature sources.

Collection building and control involves purchase, inventory, maintenance and control of library materials, and cataloguing, using the on-line catalogue support system (CATSS) provided by University of Toronto Automation Systems, Inc. This system is international in scope and allows access to catalogued collections and data banks for reference searches.

The library collection is specialized in those areas relevant to the ministry's mandate and activities. In particular, the library attempts to ensure that relevant unpublished materials, so-called "grey literature" such as reports, working papers and similar documentation, are gathered and catalogued.

The range of services provided has decreased in recent years with resource constraints combined with a growing clientele. Production of bibliographies or technical reports for users has virtually ceased or is strictly limited. Library services to clients outside the ministry have been restricted, although individuals can obtain materials through inter-library loan and/or referral by their own library. The ministry library is a "net-lender" of books under the inter-library loan system.

The library does not have formal links to other institutions in its field apart from its on-line catalogue system and inter-library loans. However, linkages are maintained through professional associations and informal contacts.

BENEFICIARIES

a. Staff of the Ministry of the Solicitor General with greatest use of services by secretariat and National Parole Board personnel as well as Correctional Service of Canada headquarters staff;

b. other federal departments, academic institutions and the private sector upon a limited service basis; and

c. individuals upon referral by their own library.

EXPENDITURES ($000)

	83/84	84/85	85/86
Salaries & Wages	195	210	200
Other O&M	290	192	225
Capital			
Grants and Contributions			
TOTAL	485	402	425
PYs	7	7	7

OBSERVATIONS

The library collection is unique and does not duplicate holdings elsewhere in the federal government. While some overlap exists with university collections, the latter are, in structure and approach, academically as opposed to operationally oriented. Furthermore, the library has a particular role as a centre for "grey literature", the conservation and accession of which is a growing problem and the subject of a National Library study group.

Although its services to non-ministry users are limited, the library is a strong resource within a fragmented and only slowly developing criminal justice library network. At present, the level of library service varies widely at the provincial level while collections are being started by police forces, agencies, and community groups. There is no overall list of collections.

The basic raison d'être of the library is to provide an information service to research and policy staff within the secretariat, the CSC and NPB in order to facilitate their work and ultimately assist in attaining ministry goals. However, the mandate of the library and its place within the ministry as a technical support require clarification prior to determination of appropriate human and fiscal resourcing. The Secretariat Corporate Systems

Unit is currently developing terms of reference for a study which would, if approved, examine the library's mandate, appropriate resource levels and the type, level and cost of services to be offered.

The National Victims Resource Centre is integrated with the library for technical purposes (books, loans, etc.) but is otherwise separate. While various reasons may justify creation of separate resource centres for ministry activities or initiatives (young offenders, crime prevention, for example) such a strategy may weaken the library's basic functions and confuse its role.

The library provides service to the ministry as a whole and to outside users although it is a charge to the secretariat's budget. The largest user group is estimated to be CSC followed by the secretariat and the NPB. Appropriate costing of and possible charging for library services should, in the view of the study team, be examined as part of the study noted above.

ASSESSMENT

The library is a basic ministry resource providing services to the secretariat, the CSC and NPB. It is a part of the infrastructure linked to and required by the policy, research and development roles of the ministry secretariat and agencies. Other means of providing the service are not available and its termination would negatively affect overall ministry operations, particularly within a policy development operation.

It is the view of the study team that the efficiency of library operation is generally acceptable within a situation of resource constraint. However, given limited resources and demand levels there is a need to define the mandate, services and resource levels to ensure effectiveness.

OPTIONS

Given the nature of the program as a corporate resource, termination would not bring benefits or savings. The program should, therefore, be maintained but with a better-defined mandate, services, resource levels and cost distribution among users.

The study team recommends to the Task Force that the government consider the following:

1. Maintaining the ministry library program.
2. The Solicitor General secretariat be directed to clearly define the ministry library mandate and required services and resource level.

CONSULTATION CENTRE ACTIVITIES
Solicitor General Canada

OBJECTIVES

- To identify existing or emerging needs for more efficient, effective and human services within or between individual components of the criminal justice system or between individual regions of the country;

- to support experimentation with new and innovative programs to meet such needs;

- to facilitate the development of linkages and open dialogue between the various components of the criminal justice system and to provide an ongoing consultation service as part of this dialogue;

- to provide the minister and the secretariat as a whole with a general overview of federal/provincial relations and with information concerning provincial and regional criminal justice environments;

- to develop the broadly based climate of cooperation at the community level and among other levels of government necessary for successful experimentation with new ideas for improvement;

- to encourage the implementation of new and innovative federal government policy initiatives in the community;

- to provide, through its regional offices, direct access to the ministry for other levels of government, community groups and the general public;

- to support and strengthen the role of voluntary organizations and to promote greater involvement of the general public in the concerns of criminal justice; and

- to disseminate information to assist communities to become involved in criminal justice issues.

AUTHORITY

This is a non-statutory program operated by the Ministry of the Solicitor General. Authority for expenditures is derived from the annual Appropriation Acts.

DESCRIPTION

The Consultation Centre consists of a national office in Ottawa and six regional offices across Canada. The national office provides overall management of the centre and its programs, and ensures integration of the centre with ministry plans and priorities. It directs and supports the regional offices, provides staff training, information materials and expertise and coordination for each program area.

Program areas, such as victims or crime prevention, are the responsibility of national consultants or special advisers who manage these programs and advise regional staff on their operation at the regional level. The regional consultants both operate programs mandated by headquarters and act as a liaison and communication channel with provincial and local authorities and the community.

The Consultation Centre is a service/resource organization and a delivery mechanism for several major programs previously assessed: Sustaining Funding of National Voluntary Organizations, the Demonstration Program and the Summer Canada/Student Employment Program. The centre, apart from funding activities though the Demonstration Program, offers expertise in project and community development, information services and training/education materials. Each regional office has an inventory of reference material on all priority issues of the ministry secretariat and is open to the public. Regional offices are located in Moncton, Montreal, Toronto, Saskatoon, Edmonton and Vancouver.

The Consultation Centre is used by the Young Offenders Directorate of the secretariat to deliver project funding as part of the Young Offenders Act implementation process.

EXPENDITURES ($000)

	83/84	84/85	85/86
Salaries and Wages	1114.8	1186.2	1448.4
Other O&M	710	704.4	1068.1
Capital	-	-	-
Grants and Contributions	2931.0	2539.2	3963.0
TOTAL	4755.8	4429.8	6479.5
PYs	31	31	35.5

Note: This resource level captures all resources allocated to the various Consultation Centre programs including those of the Demonstration Program; grants and contributions to National Voluntary Organizations, Summer Employment and Young Offenders Act implementation.

BENEFICIARIES

Provincial governments and agencies; municipal governments (police forces); non-governmental organizations; and community groups.

OBSERVATIONS

The Consultation Centre is an agent for change in the criminal justice system. It accomplishes this through the application of financial resources in specific program areas as determined by ministry policies, the creation of a climate for change, and development of consciousness of issues or needs in the community and at the official level by information and promotional activities.

In fostering change, the centre is an element of the total secretariat research and development process supporting the formulation and implementation of policy. The centre is also a primary communication channel between the ministry secretariat and the regions, provincial authorities and agencies, community groups and the general public.

There appears to be uncertainty at the regional level as to a precise definition and formulation of the centre's role and the emphasis that should be placed on creation of a climate for change or communication of ministry concerns or liaison with provincial authorities. There also seems to be some concern that regional office resources to undertake program administration, communication, liaison and community development may be insufficient for these tasks to be properly accomplished.

The centre's program administration system of overall management and budget control in Ottawa makes for a decision-making and approval process which varies considerably among projects in responding to an application. This can have negative effects on relations with the client groups concerned and, since regions do not have specific budgets, makes it difficult for regional offices to plan and advise. Moreover, in instances where projects are jointly funded with other departments, differing timeframes for the administrative procedures following approval-in-principle can significantly affect projects proceeding on schedule.

The centre does represent an irritant for provincial authorities through its demonstration program funding of projects but also by way of the community development-sensitization activities which lead to demands for services and resources. It is also felt by some that these activities are a federal intrusion into an area of provincial jurisdiction. Joint provincial/Consultation Centre committees are in place in Alberta and Quebec with more ad hoc arrangements operating elsewhere.

ASSESSMENT

The Consultation Centre and its activities are the major implementation mechanisms for the Solicitor General ministry's role as an agent of change in the criminal justice system and an integral part of the secretariat research and development function in support of the policy process. The study team believes that if the federal leadership role is to be fulfilled, Consultation Centre activities are required, given the lack of resources for experimentation and development at the provincial level. Furthermore, although the possibility of transferring delivery of programs and services to the voluntary sector exists, the obstacles to doing so in terms of accountability, federal/provincial relations and ministry policy and operations are such as to rule out this approach in the view of the study team.

However, there is a need for the Consultation Centre to more clearly define and establish a priority among the various objectives of the centre and to clearly communicate the outcome of such an exercise to staff. Furthermore, the project submission and approval process requires examination toward overall streamlining and possible delegation of some level of decision-making authority to the regions.

To ensure closer collaboration with provincial governments, current ministry secretariat intentions to establish formal joint committees with each province should be carried out quickly. Equally, the process of integration of the Consultation Centre and its demonstration project activities into the research and policy formulation process, as noted by the Auditor General in the report of his 1983 audit of the secretariat, should be pursued and consolidated in the study team's view.

OPTIONS

Termination of the Consultation Centre could negatively affect the capacity of the Ministry of the Solicitor General to carry out research and development in support of policy as well as the exercise of its role in criminal justice.

If the Consultation Centre is to be maintained it requires better definition of, with priority accorded to, objectives, administrative improvements and the establishment of consultation mechanisms with the provinces.

The study team recommends to the Task Force that the government consider the following:

1. Closing the six Consultation Centre regional offices.

2. Locating a senior official with appropriate support in each provincial and territorial capital to liaise with justice authorities on behalf of the Solicitor General and, as required, other federal departments.

3. Administering Consultation Centre programs from Ottawa, through or with provincial and territorial authorities.

4. Reviewing the Consultation Centre objectives to give a clear order of priority.

HUMAN RIGHTS PROGRAM
Secretary of State

OBJECTIVES

To increase the enjoyment of human rights and to foster compliance with Canada's domestic and international human rights commitments.

AUTHORITY

This is a non-statutory program operated by Secretary of State. Authority for its operation derives from the annual Appropriation Acts.

DESCRIPTION

This program received its mandate from Cabinet in 1968. To enhance Canadians' capacity to act as self-reliant citizens, conscious of common interests and willing to contribute to a better quality of life in Canadian society, thus achieving full and effective citizenship.

The priorities relate to the increasing awareness and knowledge of human rights:

a. in the education system, through the provinces and voluntary organizations, involving children and youth particularly at primary and secondary school levels (national and regional priority); and

b. in the private industry and labour sectors, through national employer and employee associations (national priority).

The purpose of the above priorities is to increase the amount of funding directed to the target groups mentioned. Other types of human rights activities are fundable and in particular, regions are not prevented by paragraph `b´ above from working with employee and employer associations.

Another purpose is to increase awareness and knowledge of, as well as practical involvement in, human rights by various publics (excluding court challenges and Bora Laskin fellowships).

BENEFICIARIES

Financial assistance in the form of grants and or contributions may be provided only to the following classes of recipients:

a. voluntary organizations: A group of Canadian citizens or permanent residents who have voluntarily associated themselves for a non-profit purpose (at a national, provincial, community or neighbourhood level); and

b. non-governmental institutions: A non-profit organization, whether voluntarily or not as defined above, established to serve a membership or purpose related to a specific occupation, profession or service and which is not under the direction of any level of government. Such organizations, whether national, regional or local in scope, encourage and facilitate communication and interaction. This class of recipients includes post-secondary institutes.

EXPENDITURES (\$000)

	83/84	84/85	85/86
Salaries & Wages	482	869	744
Other O&M	475	453	540
Capital	3	6	1
Grants and Contributions	485	1197	980
TOTAL	1,445	2,525	2,265
PYs	22	14 11 authorized	18 7 authorized

OBSERVATIONS

The Human Rights Program serves as the focal point for federal activities in human rights, at the international, national and regional levels. Human rights are viewed not from a strictly legal aspect but from the perspective of citizenship development as a means of creating a sense of belonging. The program recognizes that human rights concerns underlie, and are critical, in citizenship development by working with groups such as women, Natives, youth, visible minorities, the handicapped and minority language communities.

A recent moderate increase in the program's funding will enable it to strengthen its education and promotion activities which are the key aspects in augmenting Canadians' knowledge, awareness and enjoyment of human rights.

The initiatives in the field of human rights have just begun and will require more support from this program for the dissemination of necessary educational materials to better inform Canadians.

The study team believes that the number of cases yet to be determined by the Supreme Court, uncertainty concerning interpretation of the Charter and the report of the Committee on Equality Rights still to be processed, reinforces the previous observation.

ASSESSMENT

The Human Rights Program is currently being evaluated. The evaluation results are due in February 1986 and will address issues of program impacts, effects and possible alternatives to meet program objectives.

A recent comprehensive audit of the directorate, which delivers the program at the national level, revealed no major weakness of note. Most of the recommendations have been fully addressed or will be fully addressed by March 31, 1986.

The program is decentralized and regional offices deliver it to provincial and local non-government organizations. Its mandate is quite specific and possible duplication between this program and others is minimal.

Given the responsibility of the Canadian Human Rights Commission and the criteria of the Human Rights Law Fund, there appears to be no duplication with this fund in the view of the study team.

OPTIONS

The federal government regulates only 10 per cent of the workforce while human rights are concerns for senior levels of both the federal and provincial governments.

It is therefore essential, in the view of the study team, that in order to ensure there will be no duplication in the delivery of human rights programs and to maintain cost efficiency, that the dissemination of programs and funding be co-ordinated with provincial programs.

The study team recommends to the Task Force that the government continue the program as is, subject to evaluation considerations.

CANADIAN CENTRE FOR JUSTICE STATISTICS

OBJECTIVES

To provide, within the direction of the Justice Information Council, information on the justice system in Canada (i.e. to describe the substantive, procedural and administrative aspects of justice systems in Canada through the presentation of useful information and to support the development of information systems).

AUTHORITY

Cabinet decision 1981.
Cabinet decision 1984.

DESCRIPTION

The Canadian Centre for Justice Statistics commenced operation in June 1981. It consists of two major operating groups -- the Statistics and Information Directorate, and the Technical Assistance Directorate -- as well as units dedicated to Policy, Planning and Evaluation, Integration and Analysis, and Systems and Data Retrieval.

From an operational standpoint, the centre reports to the Assistant Chief Statistician for Social Statistics of Statistics Canada. It is also answerable to federal and provincial justice deputies, through the Justice Information Council. The Chief Statistician of Canada is also a member of the council. Major policy and program decisions are made by the Justice Information Council, supported by the Liaison Officers' Committee. Program development committees act as substantive/technical advisers to centre staff.

The justice deputies accepted the recommendation of a federal/provincial study team that a satellite operation of Statistics Canada be the focal point for a revitalized national justice statistics initiative. The satellite, while continuing to be an organizational arm of Statistics Canada, would seek to acquire the active cooperation and support of deputy ministers responsible for justice, both federal and provincial, by undertaking to recognize their priorities and thus be able to respond more quickly and effectively to the community being served.

All justice ministers and their deputies agreed to commit resources to develop national justice statistics, management information systems and operational information. The Deputies, joining with the Chief Statistician, constituted the Justice Information Council (JIC), and are responsible for establishing the program priorities of the national justice statistics centre operated by Statistics Canada.

BENEFICIARIES

The primary clients of CCJS are the deputy ministers responsible for the administration of justice in Canada plus interest groups such as the Canadian Association of Chiefs of Police, various judges' associations (family court judges, etc.), parliamentarians, the media and the public in general.

EXPENDITURES ($000)

	83/84	84/85	85/86
Salaries and Wages	2350.3	2499.8	3309.4
Other O&M	2499.7	2769.6	2684.7
Capital	-	-	-
Grants and Contributions	-	-	-
TOTAL	4850.0	5269.4	5994.1
PYs	76	82	85

OBSERVATIONS

The centre's mandate is to describe the substantive, procedural and administrative aspects of the justice system in Canada through the presentation of useful information and to support the development of information systems.

From this mandate are derived two objectives for the centre:

a. to produce relevant, timely information on the justice system:

   - by collecting data from all jurisdictions to produce measures of the caseload, caseload characteristics and resources of each component of the justice system;
   - collecting and integrating data from other sources to enhance measures of justice system activity; and
   - by compiling information which describes justice system activity and serves to contextualize and explain the measures produced.

b. To provide a range of services designed to improve the administration of justice by assisting in the acquisition and use of information, and the introduction and use of modern technology.

Given this mandate and these objectives, the precise nature of the products and services that the centre will focus upon can be determined only through a thorough and continuing assessment of needs and priorities. Within each sector, priorities must be established between the different types of information that will be collected and produced. In 1980, the priorities for different types of information were assessed in each sector and that work will remain the basis for the continuing development and enhancement of each program area.

The Liaison Officers' Committee (LOC) is one of the federal/provincial mechanisms established to:

- establish a coordinated approach to the collection, production and dissemination of national statistics and information for each sector; and
- to provide support to the development of operational systems which can meet both local and national information needs.

Increasing pressure to produce court statistics has been placed on the centre by the federal Department of

Justice which has the primary responsibility for criminal law policy in Canada. The centre's number one priority at the present time is securing agreement from provincial court administrators to gather and compile data identified as necessary for statistical purposes.

The Justice Information Council of Deputy Ministers reviews and approves the multi-year program plans of the centre on an annual basis. The Liaison Officers' Committee of officials designated by their deputies guides the centre.

A concern raised by the external evaluators prior to the end of the first three-year mandate, and which has arisen again during discussions on a "Future of the CCJS" paper prepared by a member at the JIC, is the maintenance of involvement of the deputy ministers in the direction and management of the centre.

Of fundamental importance to the initiative is that the legislative authority of the Statistical Act, by itself, is not enough to ensure the successful production of national justice statistics. Maintenance of the commitment and "sense of ownership" by jurisdictions are essential ingredients to the long-term success of the centre.

At the LOC meeting held in Charlottetown in September 1985, members suggested that it was an appropriate time for JIC to reaffirm the principles upon which the federal provincial initiative and the centre are based. In particular, there is a need to reaffirm the principles of partnerships, shared responsibility for the collection and processing of data and a high level of commitment and involvement by the JIC in the direction and management of the centre.

In the view of the study team, the model of the centre and its supporting management and consultative procedures could be considered for utilization in other areas of joint federal/provincial involvement such as education, labour and health and welfare. It may have applicability to policy and research endeavours in addition to statistical analysis.

ASSESSMENT

The centre initiative retains the general support of all jurisdictions involved. All expectations regarding product, however, have not been met for a number of reasons, including:

a. the absence of information systems in all jurisdictions to feed a national statistical program in all sectors;

b. lack of clear program plans in all sectors and most notably courts and youth justice;

c. a certain amount of disagreement among key participants regarding the priority which should be given to supporting initiatives tangential to the generation of a "core" of national statistics;

d. lack of agreement on what should constitute that core; and

e. recent turnover at senior management levels both within the centre and the committee structures which support it.

A number of respondents were of the view that the centre lacks a sufficient number of high-quality analytical staff to effectively and quickly carry out its mandate and that the current structure of the Statistics and Information Directorate, which consists of a large number of small analytical units, may not be the most effective and flexible organization to undertake the major developmental initiatives necessary. These factors have also likely contributed to slowness of progress in some areas.

The committee structure which directs the centre is large and meets relatively infrequently. There are 28 members on the Justice Information Council and on the Liaison Officers' Committee. This makes it difficult for the committees to provide clear direction to the centre and to resolve identified problems.

In the view of the study team, the problems associated with the absence of information systems in the provinces will persist for some time. The technical assistance functions of the centre are designed specifically to reduce that problem but are able to do so only when a jurisdiction is ready to proceed. Improved coordination of development in key sectors involving operational, police and court systems should, the study team believes, be encouraged, to ensure the cost-effective expenditure of federal development funds.

A number of respondents expressed concern over the "integration of the centre" into the Statistics Canada bureaucracy. While there is no hard evidence that this is, in fact, occurring or that it has negatively affected the centre's ability to carry out its mandate, there exists concern that the neutrality of the centre may be affected and the sense of joint ownership of the enterprise be threatened.

A recent program evaluation concluded: "The current initiative (the Centre and its support structure of committees) represents a bold attempt to overcome a history characterized by lack of any sustained progress in the development of national justice statistics in Canada. To appreciate the progress made, the initiative must be viewed against four decades of concern over the state of national justice statistics, and 10 years of effort to develop mechanisms for improving them.... It appears, in the light of previous efforts, the most effective means of ensuring long term, sustained development of national justice statistics.... The current initiative is experimental in Statistics Canada and ... it differs from most other federal/provincial undertakings.... The unique nature of the present initiative has particular strengths arising in large part from its 'joint ownership' status".

OPTIONS

The logical alternatives are:

1. Status quo. The centre is to be subjected to an external evaluation in 1988 and its future mandate can most usefully be reviewed at that time. Identified deficiencies could, however, be addressed immediately. Consideration could be given to improving the oversight capacity of the deputy ministers and liaison officers. Should a national secretariat be established, such a body could assist in directing the centre on the deputies' behalf.

2. Expand the mandate of the centre to include research and evaluation activities to better meet the needs of the non-federal jurisdictions and promote a national approach to criminal justice research. This alternative could well entail a reduction in Solicitor General and Justice departments' research resources. Given the

JUSTICE PROGRAMS

LEGAL SERVICES

Paragraphs 4(b) and 5(b) of the Department of Justice Act, R.S.C. 1970, c.J-2, charge the Minister of Justice with ensuring that the administration of public affairs is in accordance with the law and with the duty to advise the heads of government departments on all matters of law connected with such departments.

ORGANIZATION

Some 290 lawyers in the department's Legal Services Branch and nine regional offices located across the country provide legal services to more than 48 departments, agencies and other governmental bodies. Although employed by and ultimately responsible to the Department of Justice, approximately two-thirds are located in departmental legal services. Support services are provided by the individual departments.

The present method of provision of legal services to departments and agencies has its roots in the 1962 Royal Commission on Government Organization (Glassco) which recommended, subject to certain specific exclusions, that the Department of Justice assume responsibility for an integrated legal service embracing all legal staffs of departments and agencies. The commission noted that an integrated legal service would permit lawyers the "special degree of independence" necessary in order to provide impartial advice, provide for more satisfactory career prospects and better use of individual capabilities, and introduce greater flexibility to meet the intermittent needs of some departments.

Decentralization results in a better understanding of the client department's policy and program objectives and increases client access to legal advice, thus ensuring that the client's operations conform to law and making it possible to coordinate and implement an overall legal strategy across the government. As well, participation of the department's lawyers on the management team results in an understanding of policy issues which ensures that legal opinions are given in the proper context.

Duties include advising the client on contracts, real estate and other commercial agreements and transactions, drafting regulations, interpreting statutes and legal instruments, providing legal advice to ensure that the client's policies and operations are consistent with federal statutes and other laws and agreements, legal research, identifying legal issues and developments of concern to the client, and representing the client in negotiations and before administrative tribunals.

Only the Department of Justice can contract for legal services outside government pursuant to government contract regulations. Other departments cannot hire outside "agents" without its approval. This ensures conformity with the Department of Justice Act and encourages a uniform policy on legal issues.

An assessment of legal services to departments and agencies by the Department of Justice's Bureau of Program Evaluation and Internal Audit concluded that both the quality of services provided and client satisfaction were generally acceptable. In order that legal services lawyers see themselves as part of an integrated organization, the bureau recommends more management of lawyers to improve identification with Justice objectives and avoid morale and attitude problems and better management to identify needs, resolve legal conflicts and maintain quality and improved communication and coordination. In view of this evaluation, it was not felt necessary by the study team to go over the ground it covered.

The establishing of resource levels for legal services has long been identified as a problem area both for Justice and the client departments. Client proposals to Treasury Board, particularly with regard to new programs, often fail to take into account legal service requirements, either because the client cannot quantify them at the time, fails to identify them or simply ignores them. Thus, Justice is unable to adequately evaluate future needs. Although counsel in the various departments have been of assistance in this regard, Justice usually does not participate in those departments' submissions to Treasury Board, but must make its requests often based on uncertain information regarding clients' needs. Thus, according to Justice it cannot adequately anticipate needs before they arise.

To meet these concerns, the Terms of Reference charged the Justice team with considering alternate resourcing strategies including cost-recovery and integration of resource demands.

Cost-recovery would involve developing a method of billing the client for the value of legal services rendered. Theoretically it may cut costs by encouraging the client to use legal services only where absolutely necessary; improve accountability by forcing the client to identify, with some degree of precision, its legal requirements; improve efficiency by ensuring that counsel use their time in the most effective manner; and, cause the client to appreciate the value and cost of the legal services provided, thus ensuring that it consider the implications of any program for legal costs.

Interviews with officials both in Justice and some client departments revealed a number of concerns. Cost-recovery would be expensive to administer, requiring an extensive record-keeping system which would require much valuable time when resources are now only barely able to keep pace with demand. While many lawyers in private practice keep such records, they do so in the knowledge that the client is free at any time to tax an account.

Cost-recovery would, of necessity, require the creation of a system to reconcile disputes that would arise over value of services.

Departments may fail to seek timely legal advice, thus compounding not only the problem but the eventual costs. The informality which now exists between "in-house counsel" and the client would be lost, to an extent dependent upon the level at which a decision could be made to seek legal advice. One is hardly likely to ask a casual question of counsel if the result is the generation of a legal bill.

Administratively viewed, cost recovery is illusory, in effect only moving cost around. If departments failed to make adequate use of legal services, it could be impossible to maintain cohesive government policy on legal issues. Some departments could, in the guise of consultation contracts, use outside legal advice, thus incurring even greater costs, and resulting in private sector legal opinions which conflict with Justice opinions and are inconsistent with government policy.

The present independence of counsel, viewed as essential by the Glassco Commission, may be hampered by pressure from the client to have legal advice and opinions conform to the client's wishes rather than relate to accuracy and sound government policy.

The Department of Justice audit referred to above noted that the level of legal services provided by Justice is generally regarded by the client departments as being of high quality, undoubtedly due in part to the ability of Justice to retain in government service senior lawyers with considerable expertise. Under cost-recovery, the client may seek the cheapest legal advice, which may not be the best.

Because any possible benefits would be significantly outweighed by the negative aspects, cost-recovery is not a practical alternative in the view of the study team.

A more fruitful approach would be the integration of legal service requirements with the overall resource priorities of the client who, in developing programs, should involve the Department of Justice, thus enabling both to identify, at an early stage, future legal service requirements. This can best be done by allowing departmental counsel, as a member of the management team (although not directly involved in formulating policy), to have access to information regarding policy directions and plans. All Treasury Board submissions that have implications for the use of legal services should involve Justice as a party. This has the advantage of allowing Justice to plan the use of its resources, while avoiding the necessity of justifying its resource needs in the absence of adequate knowledge of client/program needs. By better identifying the inter-relationship between client needs and availability of justice resources, Justice would then be assured that it has adequate resources to meet those needs. This is a much more logical approach in the study team's view.

A third approach was suggested wherein there would be a matching contribution of person-years between Justice and the client. While this may test the client's sincerity in the demand for increased legal services, it lacks the advantages of the integrated approach where Justice and the client apply their collective minds to the needs.

Whatever course is adopted, Justice should improve its tools for determining requirements and prepare systematic and regular reviews of base requirements for legal services in each department.

The client department should continue to provide the support services necessary to the operation of legal services within the department.

In conclusion the Justice team is of the view that:

a. The cost-recovery approach be rejected.

b. Client departments, in developing programs and determining their personnel requirements should involve the Department of Justice at an early stage where the client's future activities could create a need for additional legal services.

c. Department of Justice submissions to the Treasury Board for additional resources for legal services to departments should generally be made jointly with departments where additional legal services are required.

ROLES OF THE DEPARTMENTS OF EXTERNAL AFFAIRS AND JUSTICE IN INTERNATIONAL LAW

INTRODUCTION

International law can be broken into the components of public international law, private international law and international litigation.

Public international law usually involves relations between states in international legal matters. This includes international conferences such as Law of the Sea. It also includes the development of international treaties and to a certain extent the domestic application of such treaties.

Private international law governs the rights of individuals internationally in such matters as child abduction where the state may become involved because of the international nature.

International litigation may contain elements of public international law and/or private international law but at a level where the matter is to be heard by a body which will decide the respective rights of the parties.

While each department recognizes a role for the other in all three areas of international law, the difficulty lies in who should have the lead role in each. The most contentious area is that of international litigation as it relates to international disputes between states.

AUTHORITIES

Department of Justice

The Department of Justice generally provides legal services to the different government departments through lawyers at headquarters and lawyers working in the respective departments reporting to the Department of Justice. The Department of External Affairs is an exception to the rule in that it has traditionally provided its own legal services.

The Department of Justice Act provides that:

"4. The Minister of Justice shall:

> (a) be the official legal adviser of the Governor General and the legal member of Her Majesty's Privy Council for Canada;
> (b) see that the administration of public affairs is in accordance with law;
> (d) ... generally advise the Crown upon all matters of law put to him by the Crown;"
> ...";

"5. The Attorney General of Canada shall:

> ...
> (b) advise the heads of the several departments of the Government upon all matters of law connected with such departments; and
> ...
> (d) have the regulation and conduct of all litigation for or against the Crown or any public department, in respect of any subject with the authority or jurisdiction of Canada...".

Department of External Affairs

The Department of External Affairs, contrary to most departments, has traditionally been responsible for provision of its own legal services. Because its legal branch concentrates more on international law, External Affairs has agreed to establish a unit of Department of Justice lawyers at External Affairs for the provision of domestic legal services.

As authority for legal services outside the Department of Justice, External Affairs referred the study team to an Order-in-Council of February 19, 1913 which originally provided the department with authority in legal matters. It is recognized that the Order-in-Council does not today represent the department's authority, but according to the department, it was the historical predecessor to the legal authority now provided under the Department of External Affairs Act. The 1913 order provided that a legal advisor be appointed with the following functions:

> "To have charge of the legal work of the Department of External Affairs; to advise the Government and the department on questions of international law, the ratification, denunciation and interpretation of

> treaties, and matters involving the Dominion's international and Imperial relations; to prepare the text of treaties, legislation and Orders-in-Council respecting Imperial and foreign affairs; and for Parliamentary material explanatory thereof; to prepare references to the International Joint Commission and similar arbitrarial tribunals, and to prepare the argument on behalf of Canada; to attend International and Imperial Conferences in an advisory capacity; to undertake confidential missions abroad as directed, and to perform other work as required."

The relevant provisions of the Department of External Affairs Act provide:

> "11(1) The powers, duties and functions of the Minister extend to and include all matters over which the Parliament of Canada has jurisdiction, not by law assigned to any other department, board or agency of the Government of Canada, relating to the conduct of the external affairs of Canada, including international trade and commerce and international development.
>
> (2) In exercising his powers and carrying out his duties and functions under this Part, the Minister shall...
>
> (b) conduct all official communication between the Government of Canada and the Government of any other country...
> (c) conduct and manage international negotiations as they relate to Canada...
> (j) foster the development of international law and its application in Canada's external relations...".

The study team was also referred to the Royal Commission on Government Organization (the Glassco Commission, (Volume 2, 1962, Chapter 11), wherein the Commission supported independent legal services for the Department of External Affairs because international law "is distinctly different from the subjects of domestic and constitutional law with which solicitors in Justice and other Canadian departments must deal. International law is intimately bound up with high policy questions and relationships with other nations."

Department of External Affairs Position

External Affairs is of the view that it must maintain independent legal services from Justice due to its legal responsibilities as set out in the Department of External Affairs Act, specifically its responsibility to conduct and manage international negotiations and foster the development of international law.

It views public international law as a foreign policy function falling squarely within the department's mandate, but also recognizes a role for Justice. In the treaty area for example, External Affairs is responsible for negotiations and should also have the lead in their domestic application, but with input from Justice and other concerned departments.

Private international law is not so clearly a foreign policy matter, although at times it is difficult to distinguish from public international law. In practice, External Affairs leaves the lead role to Justice as External Affairs does not have sufficient resources to deal with it. Therefore, Justice plays the lead role but consults External Affairs.

The most contentious area is that of international litigation between states, which External Affairs views as foreign policy in another forum. When international matters go to international litigation, the lead should remain with External Affairs. It does not accept a solicitor/client relationship in this area. External Affairs must have control of the preparation and presentation of Canada's case. However, it does wish to consult Justice and benefit from Justice's resources.

Department of Justice Position

Justice recognizes that the existing situation is that External Affairs has the lead in public international law and Justice has the lead in private international law and there is consultation with the other in both areas. There is some concern however, as to the extent to which External Affairs should have the lead in public international law. There is no difficulty with such matters as Law of the Sea conferences, as the goal is to foster the development of international law. However, when dealing with legal disputes short of litigation, such as the legal interpretation to be given certain matters such as GATT agreements, Justice does question how External Affairs could play a legal advisory role given the terms of the Department of Justice Act.

In international litigation, the difficulty is more fundamental. A lawsuit is a lawsuit and the expertise rests with Justice. Once a matter is beyond negotiations, the lead should be with the Department of Justice.

PRECEDENTS

The departmental jurisdictional differences in international litigation surfaced specifically in two matters: the Gulf of Maine dispute in 1980 and more recently, the La Bretagne dispute.

In Gulf of Maine, at issue was a boundary dispute between Canada and the United States. The two departments disagreed over which should have responsibility for presenting Canada's case. It was decided, with PCO involvement, that the Department of External Affairs should appoint the agent, but that counsel from each department should be involved.

In La Bretagne, at issue were the fishing rights of France in the Gulf of St. Lawrence. The Department of Justice did not recognize Gulf of Maine as a precedent, being of the view that each situation should be looked at on its own. The matter was resolved between the two departments by recognizing the agent role in External Affairs with an overview in preparing and arguing the case; senior Justice personnel would supervise and direct the marshalling of arguments and preparation of the case.

CONCLUSION

Each department recognizes a role for the other in international law and each describes the relationship as a partnership. Disputes such as occurred in Gulf of Maine and La Bretagne are exceptional but one must question the potential impact that they could have on Canada's future interests in international litigation in particular.

The alternatives to consider are to maintain the status quo or to resolve disputes between the departments.

Maintaining the status quo could be rationalized on the basis that disputes such as occurred in the "Gulf of Maine" and "La Bretagne" cases are relatively infrequent and that when they do arise, issues are eventually resolved. The departments generally appear to have developed a working relationship and each recognizes the necessary participation of the other.

A solution could be attained through one of the following options:

a. recognize in External Affairs the lead responsibility for international law generally, with necessary input from Justice;

b. recognize in Justice the lead responsibility for international law generally, with necessary input from External Affairs;

c. confirm the lead responsibility for External Affairs in public international law, the lead responsibility for Justice in private international law and determine who should have the lead for international litigation -- again with necessary input from the other department in each area; and

d. have Justice provide all legal services to External Affairs including the area of international law, in a manner similar to what exists for most other federal departments, recognizing External Affairs as the client in international law.

The study team is of the view that the status quo is inadequate and that some change is required based on consideration of the arguments on both sides.

The options are to:

a. maintain the status quo, accepting that the occasional dispute can be resolved;

b. recognize in External Affairs the lead responsibility for international law with Justice participation;

c. recognize in Justice the lead responsibility for international law with External Affairs participation;

d. confirm the lead role in External Affairs in public international law, the lead role for Justice in private international law and determine who should have the lead in international litigation; and

e. expand the role of the Department of Justice unit at External Affairs to include international law as well as domestic law.

The study team recommends to the Task Force that the government consider expanding the role of the Department of Justice unit now at External Affairs to include legal services in international law. This would establish at External Affairs the same manner of provision of legal services as now exists in most federal departments and in the Department of Justice. By providing in-house counsel to External Affairs, this would be sensitive to External Affairs' concerns. It would in the study team's view resolve disputes between the two departments in international litigation where the relationship would be one of solicitor/client, with External Affairs because of its international obligations being the client, and with Justice having responsibility for the conduct of litigation through its litigation experts.

HUMAN RIGHTS AND THE DEPARTMENT OF JUSTICE

With respect to human rights, three of the departments involved are: the Secretary of State (which has the lead role), the Department of External Affairs and the Department of Justice. The relationship between the three departments has never been formalized in law. In 1984, Cabinet, however, did outline the role of the departments involved in human rights and confirm the lead role of Secretary of State.

In 1968, Cabinet designated the Secretary of State to serve as the central point of reference for the federal government's domestic interest in human rights and called upon that department to implement a continuing educational program to promote human rights in Canada. In 1975, the continuing Federal/Provincial/Territorial Committee of Officials Responsible for Human Rights was established to coordinate Canada's implementation of its obligations under international covenants on human rights with the department providing the chairperson. The department mainly promotes human rights through grants to voluntary groups and further educational activities as well as provides a supporting secretariat for the federal/provincial/territorial committee on human rights. The scope of the Human Rights program has been somewhat expanded with the coming into force of the Charter.

The Department of External Affairs is responsible for the development and pursuit of the international human rights policy of the Canadian government. This policy is developed in consultation with other Canadian departments and agencies concerned, and has as its broad objective the promotion of fundamental civil, political and economic rights on a global basis. The department pursues this policy through representation at the United Nations and its subsidiary organs, in other multilateral institutions, and in Canada's bilateral relations with individual states. Wherever appropriate, representations are made to national governments on human rights situations of general concern to the international community or of particular concern to Canada. External Affairs mainly provides Secretary of State with the expert advice necessary for effective response by Canada to its international obligations in the area of human rights.

Subsequent to the enactment of the Canadian Charter of Rights and Freedoms, the Department of Justice undertook a systematic review of all federal legislation to ensure compliance with the Charter. The Department of Justice also reviews proposed legislation to ensure it is compatible with the Charter. The department advises and cooperates with the Department of External Affairs and the Secretary of State in ensuring that Canada complies with international obligations and, with them and other departments involved, deals with complaints by Canadians to the United Nations. The Department of Justice also administers a Human Rights Law Fund to provide financial assistance to projects undertaken by non-governmental groups relating to human rights.

Justice has had, at times, diverging views with Secretary of State on its role in human rights. Justice feels that it should have a legal role that encompasses a fairly important policy function flowing from its lead role with respect to the Charter and any litigation that may arise out of the Charter. Justice is also of the view that it is not as responsive as it should be to Secretary of State requests in view of limited Justice resources. It feels that more mechanisms would have to be found in order to set priorities for Secretary of State requests. Secretary of State, on the other hand, believes that Justice is not a good forum for the formulation of policy on human rights issues as it is often in conflict with others as a result of its responsibilities for the enforcement of the Charter.

With respect to External Affairs, Justice takes the view that all human rights issues that have international implications only, such as responses to the United Nations, should be handled by that department, provided there are no domestic law implications. External Affairs agrees with this view.

The study team interviewed senior officials at Secretary of State, External Affairs and Justice and found that,generally, the relationship between the three departments works fairly well. Although not formalized in law, responsibilities are sufficiently defined so as to avoid overlap or duplication. Coordinating mechanisms such as the Interdepartmental Committee on Human Rights provide a forum for consultation of all departments involved in human rights issues. Officials agreed that from time to time confrontations arise but a solution is always found.

Statutory formalization of the human rights' Secretary of State/External Affairs/Justice relationship would be difficult to achieve as human rights questions very often have promotional/advisory elements (Secretary of State), domestic law/Charter implications (Justice) and international issues (External Affairs). The present structure is flexible enough to permit all government departments that have an interest in human rights to have an input on a given question while providing Secretary of State with the support it needs to exercise its leadership role. Also, other departments such as Employment and Immigration might wish to have their role formalized with respect to labour market issues that have an impact on human rights.

DEPARTMENT OF CONSUMER AND CORPORATE AFFAIRS

The Department of Consumer and Corporate Affairs (CCA) is involved in three major activities.

1. The Bureau of Corporate Affairs looks after:

    a. intellectual property, which includes:

        - patents;
        - trade marks;
        - copyrights; and
        - industrial design.

    b. bankruptcy matters; and

    c. the incorporation of federal companies and related matters.

2. The Bureau of Competition Policy concerns itself with:

    a. the administration and enforcement of the Combines Investigation Act, which deals with:

        - conspiracy with respect to trade;
        - mergers;
        - monopoly; and
        - pricing practices.

    b. the promotion of competition policy considerations;

    c. the economic and social significance of an effective competition policy;

    d. the development of federal economic policies;

    e. economic analysis of competition policy issues in support of the bureau's policy and enforcement activities; and

    f. the briefing of the minister regarding the representation of Canadian interest pertaining to competition and trade issues in the international fora.

3. The Bureau of Consumer Affairs is responsible for:

   a. management services;
   b. consumer services e.g. business relations;
   c. aspects of the Energy Program;
   d. legal methodology e.g. weights and measures; and
   e. product safety.

The Department of Justice provides legal service to CCA, by assigning lawyers to that department. In doing so, Justice provides legal advice to CCA on litigation to be undertaken on consumer matters and participates in policy development pertaining to consumer and corporate affairs.

The major legal issue that exists between the Department of Justice and CCA with respect to intellectual property is in the area of investigation of trade functions. The Bureau of Competition Policy has the authority, by law, to investigate trade practices and yet when it finds that such practices infringe the law, it must turn the matter over to the Department of Justice. Justice then considers whether charges should be laid and if so, will select the lawyer who will conduct the prosecution. Where the lawyer is from the private sector, CCA will have to pay the lawyer's fee, travel and living expenses. The bureau is of the view that this is unfair and that Justice should pay the costs since the investigator's (CCA) file is turned over to Justice. CCA feels it is the function of Justice to make all the decisions thereafter, such as determining whether charges should be laid, selecting the lawyer and later, deciding whether an appeal should be taken.

The bureaus of Competition Policy and Bankruptcy, prior to 1967/68, were part of the Department of Justice. The question one would ask is whether they should be returned to the Department of Justice as a better rationalization of legal services and more specifically criminal prosecutions. No compelling reason has been found for doing so although there is some argument for and against such a propositon. Unless it is patently clear that such a move will increase efficiency and effectiveness, the status quo should be maintained in the view of the study team.

YOUNG OFFENDERS PROGRAM
Solicitor General Canada

OBJECTIVES

To ensure that the scheme of juvenile criminal justice provided for in the Young Offenders Act is implemented on a timely and effective basis.

AUTHORITY

The Young Offenders Act.

DESCRIPTION

The Young Offenders Act was given Royal Assent on July 7, 1982 and proclaimed in force on April 2, 1984.

The uniform maximum age provision became effective April 1, 1985.

The reforms introduced by the new legislation include:

a. statutory recognition of alternative measures (diversion);

b. adoption of the Criminal Code provisions governing pre-trial release and detention;

c. minimum age of criminal responsibility at 12 years of age and uniform maximum age at "under-18";

d. specific dispositional (sentencing) options that emphasize community-based sanctions and reparation to the victim;

e. determinate custodial sentences involving extensive judicial control of the administration of the disposition (there is no provision for parole or earned remission);

f. application of the Identification of Criminals Act to young people (fingerprints and photographs);

g. retention of youth court records for purposes of justice administration beyond the individual's eighteenth birthday, subject to the records destruction provisions;

h. destruction of all records pertaining to an individual, providing he or she remains free of any subsequent convictions for specified periods of time following the completion of all dispositions;

i. open courts, permitting public attendance and full media coverage, except that the name and/or identity of young persons cannot be published;

j. rights to appeal that parallel those of adults; and

k. right to legal representation at all stages of a proceeding under the Young Offenders Act where a decision that may have adverse consequences for the young offender can be taken.

Statutory responsibility for the Young Offenders Act rests with the Solicitor General and the related federal activities/initiatives are discharged by the Solicitor General Secretariat, notably, the Young Offenders Directorate.

At present, the directorate consists of 26 person-years and the personnel complement is expected to increase to approximately 30 person-years when the administrative structures for the financial agreements are fully operational. In 1985/86, the directorate is accountable for roughly $160 million covering all of its activities.

The directorate is part of the Secretariat, Policy Branch and its structure reflects its major activities. As such, it is organized into four sections, reporting to the Director General.

Financial Administration Section: Responsible for the management of the federal/provincial cost-sharing agreements that are effective from April 2, 1984 to March 31, 1989. ($139 million has been allocated for transfer payments in 1985/86). The administration of this program requires that the directorate review and assess periodic claims submitted by provincial and territorial governments and ensure that appropriate annual audits and reconciliations occur.

Program Development Section: Responsible for the management (review of proposals, establishment of priorities, etc.) of two implementation support initiatives which expire March 31, 1986:

a. Program Development - A contribution fund ($5.6 million over three years) was established to assist in the implementation of the new Act; promote innovative juvenile justice services; and, encourage technology transfer of juvenile justice experience and expertise. This program is administered in conjunction with the Consultation Centre. The present activities focus mainly on service delivery to young offenders through private sector organizations and provinces. In total, 39 contribution agreements and contracts have been approved.

b. Communications - This initiative ($0.5 million over three years) was established to disseminate relevant Young Offenders Act material to the juvenile justice community and the public at large. One project, the Young Offenders Act Highlights booklet, has recently been revised.

Information Systems and Evaluation Section: Responsible for the development and management of two initiatives which expire March 31, 1985:

a. Systems Development - This program ($12 million over three years) was established to support the development by jurisdictions of Young Offenders Act-related record-keeping and information systems and to support the development of juvenile justice statistical surveys. Contribution agreements and project planning have been initiated in every jurisdiction.

b. Research and Evaluation - This program ($2.9 million over three years) was established to carry out and coordinate research in order to assess the impact of the new Act.

Policy Section: Responsible for the development of advice and the conduct of policy studies in response to ongoing and emerging juvenile justice issues, including legislative amendments. The section is also responsible for the coordination of federal/provincial consultation mechanisms and the finalization of the cost-sharing agreements.

In March 1983, in anticipation of the proclamation of the new Young Offenders Act (April 2, 1984), the federal government initiated detailed discussions with provincial and territorial governments to redefine a mutually acceptable program of federal contributions in support of juvenile justice services. These negotiations culminated in the establishment of an "Agreement in Principle" with 11 jurisdictions and a conditional endorsement of the arrangements by the Province of Ontario by September 1984. Subsequently, a detailed "Memorandum of Agreement" was developed.

Final agreements have since been signed by Newfoundland, Nova Scotia, Prince Edward Island, New Brunswick, Ontario and Alberta, while the remaining jurisdictions, with the exception of Quebec, have indicated their intention to sign in the near future.

The essential elements of these agreements are as follows:

a. Fifty per cent cost-sharing of custodial services, including post-adjudication detention, and of alternative measures and judicial interim release programs;

b. Fifty per cent cost-sharing, less a base-year deduction, for pre-dispositional reports, assessments, screening, review boards and dispositional services;

c. implementation grants totalling $25 million;

d. implementation support funds for program development ($5.6 million), systems development ($10 million), and research ($3 million);

e. a five-year term: effective date of April 2, 1984, and expiry date of March 31, 1989;

f. a maximum annual payment of 1989/90 and subsequent years equal to 1988/89 transfers, in the absence of a revised agreement; and

g. the establishment of a continuing federal-provincial forum to ensure effective consultation and collaboration.

The principle that young offenders were to be held more accountable for criminal behaviour was accompanied by corresponding provisions in the Act according full rights to due process of law, including the right to counsel and improved access to legal aid. Young offenders legal aid services were treated as an aspect of criminal legal aid.

BENEFICIARIES

Young offenders, aged 12 to 17 years.

EXPENDITURES ($000)

	84/85	85/86	86/87	87/88
Cost-Sharing Contributions	112.1	146.1	171.4	181.4
Implementation Grants	12.5	12.5	-	-
Systems Dev.	5.7	5.4	3.5	1.5
Program Dev.	1.2	1.8	2.2	-
Research/Eval.	1.0	1.0	0.8	-
Communications	0.2	0.2	0.1	-
Capital Projects	2.0	6.0	2.0	-
O&M	1.4	1.6	1.6	1.6
Unallocated Balance	-	0.6	-	-
TOTAL	136.1	175.2	181.6	184.5
PYs	24	30	30	30

OBSERVATIONS

The Young Offenders Act and its implementation have been the subject of much debate between the provinces and the federal government. When the federal government passed the Young Offenders Act, it adopted a new philosophy for young persons by making them accountable for their behaviour and at the same time granting them rights. The Act put a heavy burden on the provinces by requiring them to keep custodial facilities separate and apart from adults, by granting the right to legal representation at all stages of a proceeding and by providing for the retention and destruction of youth court records.

Over the years, both levels of government have clashed over several issues. The first instance was the passage of the Act itself in the face of provincial concerns over matters which had broad cost implications for the provinces as well as a significant impact on the everyday administration of justice. Other issues include the negotiation of cost-sharing agreements, the postponement of uniform maximum age, the kinds of costs that are shareable, the duration of cost-sharing and the cost-sharing formula. Negotiations pointed out the need for reaching better consensus with the provinces on the nature of cost-sharing where the federal government passes legislation that affects the provinces in the administration of justice. More recently, provinces and the federal government have managed to agree on areas of amendments to the Act but the consultation process has not been satisfactory according to the provinces. No headway has been made since June and a further meeting of Deputy ministers is scheduled for early December to resolve differences on legislative amendments.

Of the six provinces and territories canvassed, most officials had concerns of some sort or other with the Act and/or its administration. One province, for instance, felt that the federal government was insensitive to the interest of the provinces in exploring possible amendments to the Act.

Some concerns were raised by two provinces who were not convinced that Ministry of the Solicitor General was the best forum to be used to put forward amendments to the Act. It was suggested that responsibility for the Act which sets out a criminal procedure for young persons might more properly rest with the Department of Justice which is already responsible for adult criminal policy. In addition, one province noted that there were no real linkages between this program and the agencies for which the Solicitor General has responsibilities.

On cost implications for implementation of the Act, most provinces felt it was too early to say what the actual amounts would be since the Act came into force only on April 2, 1984. The Young Offenders Directorate reports that only four of the six jurisdictions which have signed the agreement have submitted claims. Cost trends are therefore difficult to assess at this time as provinces are still in the process of making the transition to the Young Offenders Act.

OPTIONS

The study team recommends to the Task Force that the government consider the following:

1. Continue the program. Since the Act came into force only 18 months ago and provinces always believed it would be postponed, implementation has started slowly and no formal assessment has yet been made.

2. Review the federal/provincial consultation process. It seems from provincial accounts that consultations have not been satisfactory over the years. Consideration should be given to improving the consultation process by integrating federal/provincial discussions on young offenders with the discussions held regarding other aspects of criminal justice policy and administration. In considering this option, some thought might be given to relocating the program in the Department of Justice which is already responsible for adult criminal policy.

COURT CHALLENGES PROGRAM
Secretary of State

OBJECTIVES

This program would provide for the funding of important test cases involving federal and provincial language rights protected by the Constitution and of cases involving challenges to federal legislation, policies and practices based on certain sections of the Canadian Charter of Rights and Freedoms.

AUTHORITY

Cabinet decision plus a Memorandum of Agreement signed on September 25, 1985, by the Secretary of State with the Canadian Council on Social Development.

DESCRIPTION

The former Court Challenges Programs which provided funds for important test cases related to language rights (sections 16 to 23 of the Charter) expired on March 31, 1985. Under the former program, the Department of Justice provided advice to the Secretary of State as to the merit and funding of challenges under the Charter. The new program is privatized to a large degree since its operation is vested in the Canadian Council on Social Development. The actual operation of the program would be undertaken by an independent panel of the Council according to criteria, terms and conditions set out in the Memorandum of Agreement signed by the Secretary of State and the Council.

Under the new program, assistance may be provided to cases which test language rights based on the Constitution Act, 1867, the Manitoba Act or on sections 16 to 23 of the Constitution Act, 1982. It also covers funding for cases involving challenges to federal legislation based on sections 15 (equality rights) and 28 (equality of sexes) and on arguments based on section 27 (multiculturalism) and made in support of arguments based on section 15. Assistance would be provided to individuals and non-profit groups only for issues of substantial importance that have legal merit and that are of consequence for a number of people. Some limits exist; for instance, in dealing with equality cases priority is accorded to cases having national importance to disadvantaged groups. Funding for contributions in 1985/86 is $1 million and from 1986/87 to 1989/90 is $2 million per year.

OBSERVATIONS

There is a possibility that the new program may overlap with the Native Test Case Litigation Program maintained by the Department of Indian Affairs and Northern Development and with aspects of legal aid, especially in those provinces which encourage group representation or public interest advocacy through their legal aid programs. In the view of the study team, when the Court Challenges Program is assessed, consideration should be given to whether, and to what extent, it has contributed to the withdrawal of similar or related activities that might otherwise have been undertaken by provincial or non-governmental agencies.

No assessment of this program is possible at this time as it is not yet fully operational. The program is to be reviewed in its fourth year of operation to determine the need for continuation beyond the fifth year.

COMPETITION POLICY ADMINISTRATION
Consumer and Corporate Affairs

OBJECTIVES

To provide administrative support and overall management direction to the Bureau of Competition Policy, and accountability for its financial resources.

AUTHORITY

Combines Investigation Act.

DESCRIPTION

Competition Policy Administration provides administrative and management functions for the Bureau of Competition Policy. The functions are:

a. General management including:

  - receiving public complaints and requests for information and distributing them to the bureau for action;
  - word processing and purchasing for the bureau;
  - establishment of a budget to pay non-justice lawyers for presenting combines cases on behalf of the Crown, and to pay for intervention before regulatory bodies and for the service of combines experts;
  - initiation and control of all staffing action; and
  - tabulating and analysing time-keeping reports.

b. Planning and reporting for:

  - official languages, affirmative action, and training and evaluation;

- information required by the Assistant Deputy Minister, Bureau of Competition Policy;
- main estimates and multi-year Operational Plans, strategies planning, environmental analysis, e.g. issue forecasting; and
- the annual report of the Director of Investigation and Research.

c. Policy development for:

- policies and practices regarding the Charter of Rights; and
- position papers to support the Minutes of Consumer and Corporate Affairs with regard to proposed amendments to the Combines Investigation Act.

BENEFICIARIES

The Bureau of Competition Policy.

EXPENDITURES ($000)

CPA	**81/82**	**82/83**	**83/84**	**84/85**	**85/86 (Apr-Sept)**
Salaries & Wages	795	813	834	868	457
Other O&M	300	285	215	260	119
Capital	--	--	--	--	--
Grants & Contribution	--	--	--	--	--
TOTAL	1,095	1,098	1,049	1,125	571
PYs	26.6	27.5	26.6	26.8	14

Bureau of Competition Policy	**81/82**	**82/83**	**83/84**	**84/85**	**85/86 (Apr-Sept)**
Salaries & Wages; and Other O&M	11,133	12,814	13,988	14,400	7,796
PYs	241	241	247	260	129

OBSERVATIONS

The Assistant Deputy Minister, Bureau of Competition Policy, is responsible for this program. One-third of the bureau's person-years are expended for administration and management functions while two-thirds are attached to Management Services.

Competition Policy Administration as such is not concerned with the enforcement of the Combines Investigation Act and merely acts as administrative support for the bureau's activities.

ASSESSMENT

This program reflects functions which are diffused throughout the bureau and is purely administrative in nature.

OPTIONS

The Competition Policy Administration is essential to support the operation of the bureau. The study team recommends to the Task Force that the government consider no change be made at this time.

JUDGES AND JUDGES' SPOUSES AND CHILDREN SALARIES/ALLOWANCES/GRATUITIES
Federal Judicial Affairs

OBJECTIVES

The program provides administrative support for all salaries, allowances and annuities paid to judges of the Federal Court of Canada and the Tax Court of Canada, and to all other federally-appointed judges. It covers gratuities to spouses of judges who die in office and pays annuities to spouses and children of deceased judges.

AUTHORITY

Parts I and III of the Judges Act.

DESCRIPTION

The responsibilities of the Commissioner for Federal Judicial Affairs (FJA) under this program include:

a. administration of the payment of judges' salaries (except those of Supreme Court of Canada justices) and annuities to retired judges and to qualified surviving dependents of deceased judges. This requires FJA to process and distribute pay-cheques to approximately 785 judges and to prepare Cabinet submissions for Orders-in-Council to grant annuities to retired judges or qualified dependents;

b. administration and approval of all matters respecting the payment to judges of all travelling, representational, conference, incidental, removal and other allowances. FJA processes all applications by judges for travelling, transfers, removal, etc. made under the Act or the regulations;

c. administration of records regarding medical, hospital and other insurance plans for judges and their dependents;

d. administration and approval of the payment of expenses incurred by judges serving as commissioners, arbitrators, adjudicators, referees, conciliators or mediators on a commission or inquiry; and

e. administration of all matters relating to the resignation or retirement of a judge -- FJA prepares cabinet submissions for Orders-in-Council to approve the resignation or retirement of a judge and fix the amount of his/her pension.

The number of person-years for the administration of this program for 1985/86 is six; total cost is $190,000. Judges salaries, benefits, pensions and other expenditures are estimated at $103 million for 1985/86.

BENEFICIARIES

There are approximately 1,100 recipients under this program made up of federally-appointed judges (salaries, etc), spouses of judges who die in office (gratuities), as well as spouses and children of deceased judges (annuities).

EXPENDITURES ($000)

	83/84	84/85	85/86
O&M	160	182	190
PYs	6	6	6

OBSERVATIONS

FJA was created in 1978 as an entirely separate organization from the Department of Justice to remove possible conflicts of interest for the department which regularly appears before the courts. Its overall purpose is to provide for the financial, personnel and administrative needs of the federal judiciary formerly provided by the Department of Justice.

Administrative matters with respect to the Supreme Court of Canada are handled by the Registrar of that Court who is totally independent from FJA.

OPTIONS

One possible option is to relocate the program in the Department of Justice.

However, since this function has not existed in the Department of Justice since 1978, it would be possible only by transferring existing FJA human resources to Justice. Such an initiative might be perceived as an attempt to interfere indirectly with matters affecting the judiciary and to deny judges a personalized service which they have now enjoyed for some time. The question of the independence of the judiciary is raised under the Administration/Federal Judicial Bodies Program.

The study team recommends to the Task Force that the government consider maintaining the status quo. This option would continue to recognize the judiciary's independence as well as the special needs of judges.

ADMINISTRATION - FEDERAL JUDICIAL BODIES
Federal Judicial Affairs

OBJECTIVES

The objective of this program is to provide common policy and management services to the judges' salaries, pension and annuities program, the Language Training Program and the Federal Court Reports Program.

AUTHORITY

Parts I and III of the Judges Act.

DESCRIPTION

FJA supervises the preparation of budgetary submissions for the Federal Court of Canada, the Tax Court of Canada and the Canadian Judicial Council which is chaired by the Chief Justice of Canada and is responsible for the continuing education of judges and the investigation of complaints against judges.

Under this program, FJA is generally responsible for providing policy direction, as well as financial and personnel administration services for the judges program. The staff also attends to the disbursement of salaries, allowances and annuities for judges and their dependents.

BENEFICIARIES

All 787 federally-appointed judges.

EXPENDITURES ($000)

	83/84	84/85	85/86
O&M	834	942	1,055
PYs	12	12	12

OBSERVATIONS

FJA was created in 1978 as an entirely separate organization from the Department of Justice to remove possible conflicts of interest for the department which regularly appears before the courts. Its overall purpose is to provide for the financial, personnel and administrative needs of the federal judiciary formerly provided by the Department of Justice.

Most jurisdictions treat the administration of judges as part of their Department of Justice or Department of the Attorney General.

Some matters within the jurisdiction of FJA under the Act, such as the preparation of budget submissions for the Federal Court and the Tax Court, have been delegated to the Administrator of the Federal Court and the Registrar of the Tax Court under the general supervision of FJA.

Recent statements by the Chief Justice of Canada, as well as other statements by the Canadian Bar Association and Chief Justices have reiterated that the judiciary should be treated as an independent body to avoid placing it in any apparent or real conflict of interest. As a result of these statements, studies are currently underway in the Department of Justice on the independence of the judiciary and the appointment process for judges.

Because judges are not public servants, their benefits are governed by the Judges Act and related regulations rather than by statutes governing public servants. Policies, practices and administrative decisions made by central agencies for public servants do not apply and FJA needs to administer a statute unique to its clientele.

OPTIONS

1. Abolish the program.

   This alternative does not appear feasible since this is a statutory program which requires administrative support.

2. Relocate the program in the Department of Justice.

   This approach would be similar to the one used in the provinces and might have the advantage of combining existing resources in the Department of Justice. However, this may be perceived as an attempt to interfere indirectly with matters affecting the judiciary and to deny judges a personalized service which they have enjoyed for some time.

The study team recommends to the Task Force that the government consider maintaining the program.

This alternative would take into account the independence of the judiciary and recognize the special needs and status of federally appointed judges.

Special consideration should be given to the Department of Justice studies on the independence of the judiciary when they are completed.

LANGUAGE TRAINING
Federal Judicial Affairs

OBJECTIVES

The program seeks to assist federally-appointed judges in obtaining a working ability in both official languages plus a thorough knowledge of legal terminology so that they can perform some or all of their judicial functions in both official languages.

AUTHORITY

Pursuant to paragraph 45 d) of the Judges Act, the Minister of Justice has assigned to the Commissioner for Federal Judicial Affairs (FJA) the administration of the official languages training program for judges.

The amendment to the Criminal Code on language of trial and judicial decisions on language rights has created the need to prepare judges to preside in both official languages.

DESCRIPTION

Any federally-appointed judge who wishes to learn the other official language and who has the ability to do so may apply to the FJA Language Training Section. The applicants take a language aptitude test and meet with a language counsellor.

For instance, every year selected candidates may attend immersion sessions in French or English depending on their requirements. Candidates may also be given up to five hours a week of private tutoring between sessions. The estimated number of participants for 1985/86 is 240 for immersion sessions, 300 for private tutoring and one for total immersion.

In spite of limited human resources (four person-years), FJA meets the workload imposed by the present level of enrolment and the breadth of services offered. Meeting present objectives is made possible only by contracting out services. In large urban areas, FJA relies on teachers from the Public Service Commission (PSC) to give private tutoring, while in smaller communities FJA relies on private sector teachers.

BENEFICIARIES

Aside from federally appointed judges, 10 French-speaking, provincial judges from Ontario and Manitoba were allowed to attend, at provincial expense, a training session this year to specialize in French legal terminology.

EXPENDITURES (\$000)

	83/84	84/85	85/86
O&M	977	1,106	1,225
PYs	3	3	4

OBSERVATIONS

The program, which started in 1969, was originally designed to expose federally-appointed judges to the other culture as part of the government's policy to extend services in both official languages. It has changed from general knowledge of the second language to specialization in legal terminology to enable a judge to preside in the other language.

The federal government has a leadership role in this area and the program is perceived as a component of the federal government's official languages policy in the area of justice.

There is some indication that the criteria used to establish the eligibility list for courses are not as strong as those used by the PSC and that not many candidates are refused training.

There has been no assessment of the program's effectiveness or efficiency to date.

OPTIONS

1. Abolish the program.

   This alternative is possible if one accepts that some areas in Canada do not require bilingual judges. When a trial in such an area is to be conducted in a language other than that of the presiding judge, a judge from another district who is proficient in that language could be asked to preside. Enforcement of Criminal Code provisions on language of trial which make it compulsory in certain provinces to hold a trial in a language other than that of the presiding judge, would be difficult in provinces where no bilingual judges are to be found or where their level of language proficiency is not sufficient.

2. Amend the program to have judges' language training centrally administered by the Public Service Commission (as in the case of public servants) or by a private sector body.

   The PSC alternative would not take into account the special needs of judges who are not public servants and it might be construed as an interference with matters affecting the judiciary. The private sector option would be difficult to implement on the basis that it is a nationwide service provided to a very specialized clientele. Costs could run high if language training was totally privatized.

3. The study team recommends to the Task Force that the government maintain the status quo.

   This alternative would continue to give FJA the overall supervision for language training of its judges and, on the basis of experience, allow it to determine the needs of a very specialized clientele. It would ensure that good coordination exists with other initiatives in the area of training for judges. By contracting-out to the PSC language teachers in large urban centres, FJA is able to serve a larger number of judges in a more efficient way since it has only one office in Ottawa. This alternative also relies on the use of private sector teachers in smaller areas where the PSC has no office. Under this option, some consideration should be given to assessing the program and to having an independent evaluation of the program done which would take into account PSC standards used in assessing the candidates' ability to learn a second language as well as special needs of judges.

FEDERAL COURT REPORTS
Federal Judicial Affairs

OBJECTIVES

The objective is to publish in both official languages those decisions of the Federal Court of Canada which, in the opinion of the Executive Editor, are of sufficient significance or importance to warrant publication in the Reports.

AUTHORITY

Subsection 59(2) of the Federal Court Act provides that Reports of the Federal Court are to be published in both official languages.

Pursuant to paragraph 45 d) of the Judges Act, the Minister of Justice has assigned to the Commissioner for Federal Judicial Affairs (FJA), the administration of the translation, editing and publication of the Federal Court Reports.

DESCRIPTION

The judgments are received from the Federal Court. The Executive Editor reads each decision to determine if it merits being reported as a valuable precedent. The estimated number of written reasons for judgment is 850 for 1985/86 and the estimated number of cases published is 180 for a total number of 2,484 pages.

Once a case has been selected for publication, the judicial translation unit is notified and translations are received following judicial approval.

Cases are then assigned to legal editors for copy editing and headnote preparation. The edited manuscript is sent for typesetting to the Department of Supply and Services' (DSS) Printing Bureau. Galley and page proofs are proofread and corrected by the editorial assistants; only then is printing of the Reports authorized.

EXPENDITURES ($000)

	83/84	84/85	85/86
O&M	481	545	609
PYs	8	8	8

BENEFICIARIES

Beneficiaries have been identified by Order-in-Council as the members of the Federal Court of Canada, Chief Justices of the 10 provinces and two territories, judges, lawyers, and others across Canada who require access to the official reports of cases heard in the Federal Court of Canada.

OBSERVATIONS

As an official series, the Reports must be free of error in order for beneficiaries, who are mainly members of the legal community, to use them as a working tool. The reported number of errata for 1983/84 (latest figure) is one out of 1,350 pages published or .074 per cent.

In the provinces, court procedures are reported by various organizations which are not government controlled. Work is contracted-out and there is no evidence of direct control over publication or queries from editors to judges as in the case of the Reports where editors contact the judges directly to clarify any inconsistencies.

OPTIONS

The study team recommends to the Task Force that the government consider the following:

1. Abolish the program.

   This alternative is not possible in view of the present legal requirement that cases be reported.

2. Privatize the publication of the Reports.

   It would be difficult for a new organization to meet the required standard of producing reports that are literally free from error. Furthermore, the process of judicial translation which is unique to federal reports is a very specialized, time-consuming and costly one. In view of the requirements, privatization would not be a commercially viable project.

3. Privatize only the printing of the Reports.

   Under this option, the printing of the Reports would be contracted out. According to the latest figures provided to FJA, it costs $71.96 per page for printing by DSS plus $45.45 per hour for alterations to galley proofs. One commercial firm has quoted FJA $42.00 per page plus $20.00 per hour for alterations. On the basis of approximately 2,500 pages for 1985/86, this would mean a saving of at least $75,000 per year. This option was discussed in a 1979-study done by the Bureau of Management Consultants (BMC) which concluded that privatization in this area would be difficult because the DSS-tendering procedure for printing is complex. An updating of the 1979 BMC study could be done to see if the same conclusions still hold. This alternative would also require more coordination from the Executive Editor to ensure the same accuracy and level of control. Currently, FJA gets good service from DSS printing where reports are given a high priority.

4. Maintain the status quo.

   This alternative would provide the legal community with an official series of high quality at a relatively low cost.

CENTRAL DIVORCE REGISTRY
Department of Justice

OBJECTIVES

To record all petitions for divorce and their dispositions, and to provide upon request all relevant information to avoid the possibility of courts in two different provinces proceeding on two similar actions for divorce.

AUTHORITY

The Divorce Regulations.

DESCRIPTION

This program, established on July 2, 1968, calls for all divorce courts (190) to transmit to the Central Divorce Registry, located in the Department of Justice in Ottawa, a form (Presentation of Divorce Form) containing the name, place, and date of birth of every petitioner for divorce and respondent.

The divorce courts also relay to the Central Registry the disposition of every petition for divorce. The information received by the Central Registry is input every second Thursday to computers owned and operated by a private sector contractor.

Every second Friday, the private sector contractor provides the Central Registry with a match-list which Central Registry clerks check to determine whether any petition pertaining to the same couple has been filed previously. If two petitions regarding the same couple were filed on the same day, the registrar will report that fact to the courts involved and to the Registrar of the Federal Court. If two petitions (duplicates) were filed not on the same day and in different jurisdictions, the court concerned with the later petition will not be issued with a clearance certificate. Both courts involved will be informed of the duplication and requested to advise the parties concerned through their lawyers. For security reasons, back-up tapes are prepared by the private sector contractor and sent to the Department of Justice for storage.

The program utilizes five person-years -- a registrar and four clerks -- to perform the tasks and respond to inquiries.

BENEFICIARIES

The beneficiaries of this program are the petitioners for divorce and corollary relief, family law practitioners, the courts, government and the general public.

EXPENDITURES

	81/82	82/83	83/84	84/85	85/86
Salaries & Wages	$93,083	$108,847	$103,291	$106,000*	$110,000*
Other O&M	$50,562	$40,454	$58,222	$46,845	$41,000
Grants & Contribution	--	--	--	--	--
TOTAL	$143,645	$149,301	$161,513	$153,845	$151,000

* estimated

OBSERVATIONS

The incidence of divorce has increased almost every year since 1968. There was a slight decrease in 1983 and 1984 presumably because potential petitioners are awaiting the passage of the new Divorce Bill.

Annually, the Central Registry authorizes the private sector contractor to release to Statistics Canada the information provided by the divorce courts upon dispositions of a petition, except, of course, the names of the parties.

The total current cost of the program is $150,000. It generates approximately 80,000 requests for clearance from the divorce courts. According to proposed legislation a fee of $10 per request will be levied. This will provide revenue of $800,000 for a profit of approximately $650,000, but collection will require an increase in personnel.

To date, the beneficiaries are satisfied with the administration of the program which is a federal responsibility. Over the past 16 years, the incidence of errors in the operation of the program has been low. Those errors include incorrect certificates, incorrect data provided to Statistics Canada, etc. There is some complaint of the slowness or timeliness of the process but this is due to the slowness of the courts in transmitting the information to the Central Divorce Registry in the first place.

ASSESSMENT

All non-federal individuals interviewed about the Central Divorce Registry indicated that they were satisfied with it and, as a consequence, it should remain as is. However, when compared with another system that could deliver services more quickly in a more accessible mode they opted for the latter.

A previous consideration to locate the Registry in Statistics Canada was rejected by the Chief Statistician of Canada.

This is a relatively small program, half of which is contracted out to the private sector.

OPTIONS

The study team recommends to the Task Force that the government consider the following:

1. Maintain the status quo.

   The advantage of this option is the fact that the beneficiaries are satisfied with the program. The disadvantage pertains to the fact that it cannot respond quickly to increases in demand for services which will aggravate timeliness issues. In addition, modernization and updating to take advantage of technological advancement will be slow. When the amendments to the present legislation are introduced, the program should make a yearly profit of $650,000. Also, everyone agrees the program is currently well administered.

2. Privatize only the services component of the Registry.

   Privatization in this context means the contracting-out of all services being performed by the Central Divorce Registry. It does not mean contracting-out the authority or responsibility of the Central Divorce Registry.

   The advantages of this privatization scheme would be:

- a decrease in turnaround time for providing responses from three weeks to approximately three hours (the printout machines will provide the clearance certificates when appropriate);

- a possible reduction of the PYs in Justice as only minimum staff would be required to monitor the program and to take care of revenue, provide responses to the Minister of Justice on divorce matters, etc.;

- an incentive for the service contractor to increase its efficiency and effectiveness. No such incentive is built into the current system or status quo; and

- there would be no need to amend the regulations.

The disadvantage of this scheme is that the Central Divorce Registry would be venturing into new ground and this could create certain apprehension in the minds of both officials and beneficiaries, especially as the status quo does not generate much complaint and cost-recovery could be achieved once new legislation is passed.

LEGAL AID IN CRIMINAL CASES
Department of Justice

OBJECTIVES

To ensure that effective legal aid services to adults and young offenders are available to eligible persons on a uniform basis at reasonable cost to Canada and the provinces.

AUTHORITY

The annual Appropriation Acts, The Young Offenders Act, s. 11.

DESCRIPTION

Federal/provincial agreements respecting the provision of Criminal Legal Aid have been in place since 1972/73. Essentially, the agreements require the "provincial agency" to provide legal aid to eligible applicants in all serious criminal cases -- that is, in all indictable offences or in summary conviction matters where there is likelihood of imprisonment or loss of means of earning a livelihood.

Coverage under the federal/provincial agreement includes criminal appeals and proceedings pursuant to the Extradition Act and the Fugitive Offenders Act. For reasons of recividism (for similar offences) or because the applicant is not ordinarily a resident in one of the provinces or territories of Canada, a provincial agency may disentitle the applicant to legal aid the total amount of legal aid which the applicant has received from the provincial agency.

Until 1984/85, the adult criminal legal aid agreement included provision for legal aid to juveniles under the Juvenile Delinquents Act where there was a likelihood of imprisonment or loss of means of earning a livelihood, or where "special circumstances exist that warrant the provision of legal aid". Effective April 1, 1984, a separate (one-year) agreement was entered into with all provinces and both territories under the Young Offenders Act to ensure that legal aid was available to young offenders as required under section 11 of the Act.

The adult criminal legal aid agreements are ongoing, subject to termination by either party on one-year's notice and envisage periodic renegotiation of the financial provisions. The cost-sharing formula consists of two components: a base component reflecting 50 per cent of national shareable expenditures in 1982/83, and a growth component allowing for increases in the federal contribution of 50 per cent of the provincial increase in costs up to a ceiling of the percentage growth in the GNP minus 1 per cent. The ceiling was established as a result of a consensus reached at a First Ministers Conference in 1977 to the effect that the cost of social programs should be kept to a growth rate slightly less than the real growth in the economy.

BENEFICIARIES

Economically disadvantaged persons, including the working poor, accused of serious criminal offences, and young offenders aged 12 to 17 years.

EXPENDITURES (\$000)

	82/83	83/84	84/85	85/86	86/87
O&M	89.5	89.5	120	289	309
Contributions (Adults)	28,900	30,000	45,800	54,000	42,300
Contributions (Young Offenders)			2,500	7,600	15,000
PYs	2.75	2.75	2.75	8	8

OBSERVATIONS

Legal aid in criminal matters is now essentially regarded as a right for financially disadvantaged persons in Canada because of federal legislation, (e.g. due-process provisions of the Charter of Human Rights and Freedoms, the Young Offenders Act, s.11.) The cost of this service, which is delivered by the provinces, has escalated from \$11 million in 1973/74 to an estimated \$90 million in 1985/86.

The provinces are unsatisfied with the criminal legal aid cost-sharing formula. Under the current formula (which has a ceiling on the federal contribution related to percentage increases in the GNP minus 1 per cent), the federal contribution has fallen to approximately 46 per cent of national criminal legal aid costs.

The provinces seek 50/50 open-ended, cost-sharing in all areas of legal aid in the view that the federal government should "share the risk" in meeting the demand for legal aid services created by the mandatory coverage requirements in the federal-provincial agreement. The federal government, for its part, is concerned with retaining some control over its expenditures since it has no direct control over the administration of legal aid or the methods of delivering this service.

There is growing evidence that the cost-per-case of delivering legal aid in some legal aid programs relying extensively on the private bar is very high (two-to-three times greater) compared with most public defender programs.

Civil legal aid is cost-shareable under the Canada Assistance Plan as an "item of special need" provided to needy individuals under the "assistance" provisions of the scheme. CAP has effectively become a vehicle for underwriting the cost of provincial legal aid programs on an open-ended basis, resulting in substantial financial advantages to participating provinces without any significant increase in service. The current federal contribution to civil legal aid under CAP is approximately $22 million.

The federal government has not taken a consistent approach to cost-sharing legal aid. While there is a ceiling on the federal contribution to criminal legal aid, civil legal aid is cost-shared under the Canada Assistance Plan on a 50/50 open-ended basis. There is a ceiling on the Young Offender legal aid cost-sharing formula (.40 per capita) but other services under the Young Offenders Act are being cost-shared on an open-ended 50/50 basis.

There is strong evidence to indicate that the working poor are not being adequately serviced by legal aid (or at all in some provinces). Because of increasingly restrictive financial eligibility requirements in the provinces, some persons below the poverty line are being refused legal aid.

OPTIONS

The study team recommends to the Task Force that the government consider the following:

1. In view of the mounting evidence that some legal aid programs relying extensively on the private bar are experiencing high unit costs of delivering legal aid in comparison with public defender programs, the federal government should resist significant increases in its contribution to provinces exhibiting such trends until it is satisfied that the differences in cost are not the result of poor cost-effectiveness.

2. The federal government in its negotiations with the provinces should consider the proposition that the cost of providing legal aid through the private bar should not exceed the cost that would be involved if the services were to be provided by government directly through a public defender program. Individual provinces would remain free, as now, to select the approaches to delivering legal aid which are considered appropriate locally. Provinces which select a model that is appreciably more costly than average should be obliged an onus to show why the federal government should match its costs.

3. Consideration could be given to linking the criminal legal aid cost-sharing formula to the unit costs of delivering legal aid rather than per capita expenditures. Such a formula would be more responsive to the actual demand on individual provinces for legal aid services and enable both levels of government to compare the cost-effectiveness of different programs and different delivery models on an ongoing basis.

4. Consideration should be given to rationalizing all federal involvement in legal aid (criminal legal aid, legal aid for young offenders, and civil legal aid) under a single agreement. The agreement might be supported by complementary federal and provincial legislation as suggested by the CBA, but close consultation with the provinces would be required. The object, with or without legislation, would be to achieve agreement with the provinces on the standards to be achieved, the provision of stable funding to meet those long-term objectives and to end the ongoing

process of federal/provincial negotiation which has been more or less continuous in this area since the early 1970s.

5. Consideration could be given to developing a civil legal aid program to replace present cost-sharing of civil legal aid under the Canada Assistance Plan. A replacement program could include coverage requirements related to federal areas of interest (i.e. divorce, enforcement of maintainence orders, court-appointed counsel under the provisions of the Charter, federal administrative or quasi-judicial tribunals, etc.).

6. A federal/provincial review should be initiated into the extent to which the intended beneficiaries of legal aid (the poor, including the working poor) are excluded from service due to increasingly restrictive provincial financial eligibility requirements. Once the dimensions of this problem are known, proposals could be developed to ensure that this class of beneficiaries receives appropriate access to legal aid services. In the case of the working poor, consideration should be given to whether a form of government-subsidized prepaid legal services might be adapted to meet their legal needs.

COMPENSATION FOR VICTIMS OF VIOLENT CRIMES
Department of Justice

OBJECTIVES

To provide compensation to innocent victims of violent crimes. This program should now be viewed as part of a wider effort by both levels of government to improve justice for victims of crime, including criminal code amendments, modified procedural rules, increased emphasis on services for crime victims and the encouragement of community-based alternatives to the regular criminal court process and prisons.

AUTHORITY

Appropriation Act.

DESCRIPTION

In 1973, the federal government agreed to cost-share in provincially legislated and administered compensation programs. At that time, five provinces had legislation which provided compensation to victims of crime in limited circumstances. Effective January 1, 1973, six provinces entered into cost-sharing agreements with the federal government. As of 1985, criminal injuries compensation programs exist in every province and territory except Prince Edward Island.

Initially, the cost-sharing formula required the federal government to pay to the provinces the lesser of .05 per capita of the provincial population or 90 per cent of the compensation awarded. Effective April 1, 1977, a new formula required that the federal government contribute the greater of .10 per capita or $50,000.00, but not in excess of 50 per cent of the compensation paid. The provinces may, however, claim according to the old formula if it is to their advantage to do so.

The cost-sharing formula has not been revised since 1977 and the federal share of compensation in Canada has dropped from approximately one-third to 12.4 per cent in 1983/84.

In 1981, the federal/provincial Task Force on Justice for Victims of Crime was established to review comprehensively the needs of victims. The task force reported in June 1983 with 79 recommendations. A federal/provincial working group was established to monitor the implementation of these recommendations and to help determine the respective roles of the federal and provincial governments in that process. The working group has prepared its report to ministers and deputy ministers. The role and resource issues will be determined by both levels of government.

Recently, the provinces have requested interim revisions to the cost-sharing formula under the Crime Compensation Agreements, suggesting an immediate move to 50/50 cost-sharing effective April 1, 1986. Given the completion of the work of the federal/provincial working group, the Department of Justice has taken the position that further revisions to the Crime Compensation Agreements should take into account the larger context of federal and provincial roles in relation to justice for victims of crime.

EXPENDITURES ($000)

Year	Total Comp. Paid	Fed. Contr.	Prov. Contr.	Total Pop.	Fed. % Cost	Fed. Per Cap. Cost
1975/76	4,412,067	1,020,515	3,391,552	21,859,000	23.1	.09
1976/77	6,221,600	1,111,690	5,109,910	22,046,000	17.9	.09
1977/78	6,560,156	2,115,864	4,444,292	22,336,000	32.2	.09
1978/79	7,258,238	2,190,870	5,067,368	22,518,000	30.2	.10
1979/80	9,201,070	2,178,510	7,022,560	22,702,000	23.7	.10
1980/81	12,032,914	2,244,444	9,788,470	22,935,000	18.6	.10
1981/82	14,523,993	2,329,723	12,194,270	24,219,000	16.0	.10
1982/83	18,573,760	2,406,306	16,167,454	24,509,900	13.0	.09
1983/84	19,710,725	2,440,992	17,269,733	24,889,900	12.4	.10
1984/85	-	2,549,000	-	-	-	-
1985/86	-	2,626,000	-	-	-	-

OBSERVATIONS

a. There are two basic rationales in Canada for criminal injuries compensation:

  - the Insurance Model is based upon the fact that crime exists and people will suffer injuries as a result of crime in our existing social system. The belief of those ascribing to this social model is that the liability resulting from crime should be shared;

  - the Humanitarian Model is a form of welfare based upon sympathy for the plight of the innocent victims who suffer as a result of a criminal act;

b. most jurisdictions employ the humanitarian model. In Manitoba and Quebec, the insurance model is employed in that the given awards are identical to the amount the applicants would have received from a workers' compensation board had the injury been received at a place of employment;

c. the majority of people who would have qualified to apply for compensation were unaware of their eligibility;

d. increased public awareness would result in more applications thereby adding to the strain already felt by victim compensation boards due to insufficient resources;

e. the amount of awards is affected by welfare benefits in some cases;

f. most jurisdictions have a ceiling on awards which has not kept pace with the cost of living;

g. Canadians travelling outside the country are not eligible for compensation for injuries suffered outside Canadian jurisdiction;

h. there are no residency requirements in Canada for applicants;

i. benefits vary from jurisdiction to jurisdiction. Non-pecuniary loss is not awarded in every jurisdiction;

j. applicants are not always encouraged to attend hearings;

k. generally, compensation for good samaritans imposes the prerequisite that they be acting lawfully;

l. police officers are generally entitled to apply for compensation;

m. victims of impaired drivers are not compensable under the federal-provincial cost-sharing agreement;

n. many cases take a long time to process; and

o. legal representatives are not present at all hearings.

BENEFICIARIES

Innocent victims of violent crime.

OPTIONS

The study team recommends to the Task Force that the government consider the following:

1. Reexamine the rationale for continuing federal involvement in this program in the context of the report of the Federal/Provincial Working Group on Justice for Victims of Crime.

   The program may be a candidate for elimination, with a possible reprofiling of the funds to help victims of crime in a manner that is more clearly focused in areas of federal responsibility. (The federal share of the cost of this program has declined to about 12 per cent. The nature of the program -- a quasi-civil compensation scheme -- raises questions about the basis of continuing federal involvement in the program, especially in light of the major increase in costs which could result from changes in the program's format or in its administration.)

2. Based on a humanitarian approach to compensation, provide for an increase in the proportionate federal share, with or without a ceiling on the federal contribution. A decision to increase federal participation in funding should be coupled with consideration of the following:

   a. development of an alternative method of funding (e.g. a fine surcharge scheme) to make the program, in effect, more self-supporting;

   b. improved publicity for the program to enhance public knowledge and the utilization rate;

   c. elimination of law enforcement officers from the class of beneficiaries entitled to receive compensation if the injuries were received while on duty, where comparable benefits are otherwise obtainable;

   d. expanding the range of damage that is compensable (i.e. property damage);

   e. a more uniform approach to permitting victim appearances at the compensation hearing;

   f. changes to the schedule of offences for which compensation is payable;

   g. automatic increases to the maximum awards permitted in various provincial programs;

   h. cost of living changes should be reflected in awards;

   i. more uniformity in the limitation periods for making application under provincial schemes (which vary from one to three years);

   j. increased provision for legal representation at compensation hearings and encouraging their attendance;

   k. greater uniformity in the allowances for pain and suffering in provincial programs;

   l. shortening the period of delay between the date of application and receipt of the award; and

   m. award good samaritans who act in good faith.

LAW REFORM COMMISSION OF CANADA

OBJECTIVES

The objective of the Law Reform Commission (LRC) is to study and keep under systematic review the laws of Canada with a view to making recommendations for their improvement, modernization and reform.

AUTHORITY

The Law Reform Commission Act R.S.C. 1970 c.23.

DESCRIPTION

The LRC makes recommendations to Parliament through the Minister of Justice pursuant to a general program of research approved in 1972. Since 1971, the commission has produced over 160 study papers, 34 working papers and 22 Reports to Parliament, 10 of which have been acted upon in whole or in part by means of government legislation.

The commission views its enabling legislation as providing wide objects and powers"... to permit it to do more than simply research the law... (i.e.) to examine the philosophical basis of our legal system, to analyse the present law and identify its defects, to take bold new approaches when recommending changes and to involve others, including members of the public in the process of law reform".

Accordingly, the LRC reports annually on its effectiveness in areas other than legislative implementation of its recommendations, including its influence upon law reform through research, public education resulting from discussion of its reports and working papers, as well as its influence upon judicial decisions and in bringing about changed conduct in the administration of justice.

The LRC is currently undertaking research in five broad areas including the substantive criminal law, criminal procedure, health and environmental protection of life issues, administrative law and means of making the law more easily understood through plain language legislation, simplified government, etc.

The LRC was established as an independent agency. Independence from government was thought to be important:

a. to ensure candor on the part of individuals and non-governmental organizations consulted by the commission on a confidential basis;

b. to ensure that areas of law that tend to be ignored by government because of their low public profile are kept current; and

c. to ensure that a balanced and objective view of the various law reform proposals are advanced on a non-partisan basis.

BENEFICIARIES

The public at large and persons involved in the administration of justice.

EXPENDITURES ($000)

	82/83	83/84	84/85	85/86
Operating Exp.				
Salaries	1,445	1,573	1,677	1,777
O&M	2,600	3,173	3,317	3,205
Capital	28	31	14	67
PYs	44	45	44	47

OBSERVATIONS

During its review, the study team was made aware of reports on the LRC prepared by the Audit Services Bureau in 1982 and, more recently, by the Auditor General, both of which were critical of the commission's failure to revise and update routinely its research program, apparently lax project management practices and the lack of provision for a formal effectiveness evaluation. While the study team is not in a position to verify all of the observations made in these reports, there appears to be considerable scope for improving the commission's effectiveness measured in terms of legislative implementation of its recommendations and the timely production of topical reports.

The broad view which the commission adopts of its mandate has resulted in reports that attempt to lead public opinion rather more than is the case with provincial commissions, especially during the first decade of its operation. This has had an adverse effect on the timeliness of the LRC recommendations in terms of legislative implementation and has resulted in the commission taking a more active role in encouraging public acceptance of LRC recommendations, unlike provincial commissions which confine their post-reporting role to clarification of their recommendations. The commission, however, emphasizes that its influence upon public knowledge of the law, judicial decisions and the conduct of personnel in the administration of justice is a very important part of its role.

Since 1972, the commission has not revised its original research program or submitted a supplementary or second program, despite some changes in its work. The Act does not specify any maximum intervals within which the commission's program must be updated and revised. At least one commission chairman has taken the view that the LRC is formally obliged to include projects recommended by the Minister of Justice for priority consideration only at the time its formal program is submitted to the minister for approval or revision pursuant to section 12(1)(c) of the Act. This provision is open to some interpretation, however, since the minister's authority to refer projects to the LRC should not be frustrated by the commission's failure to revise its program on a timely basis. In practice, there is generally good cooperation between the LRC and the minister.

There is no tradition of direct reference of projects to the LRC by the Minister of Justice. The governing legislation provides that the commission shall include in any program for studies prepared by it "any study requested by the minister to which, in his opinion it is desirable in the public interest that special priority should be given". Two references were made by the Minister of Justice (Expropriation; the Lord's Day Act) but not acted upon.

In 1980/81, the LRC agreed to participate in a joint undertaking with the Department of Justice and the Ministry of the Solicitor General in an accelerated review of the criminal law that would expedite the enactment of a modern Criminal Code. The Auditor General's report is critical of the management of the criminal law review process on the part of both the LRC and also the Department of Justice which has pointed out that it "has no authority to compel compliance with any decisions of the Executive Committee of work plans by other members of the review".

Approximately 50 per cent of the work of the Ontario Law Reform Commission is the result of references from the Attorney General and somewhat more than 50 per cent of the work of the Manitoba Commission has come through directed references by the Attorney General in recent years. Both of these commissions report that between 75 and 80 per cent of their recommendations have been implemented by legislation.

The Ontario Law Reform Commission reports considerable success with its structure, that is, a relatively small core of full-time employees which monitors and prepares the work in progress by a larger number of independent, short-term contractors for commission meetings. The permanent staff also do a few "in-house" projects, usually where the report must be expedited and no extensive research is required.

While the importance of maintaining an effective core of permanent personnel is emphasized, law reform activity under the Ontario format has, in effect, been largely privatized due to the heavy reliance on independent contractors.

There is considerable support for a body to undertake longer term or more fundamental reforms which cannot be undertaken effectively by committees of the legislature or policy planning branches of the Attorneys General, which tend to focus on shorter term, crisis-oriented planning activities. Task forces or royal commissions are sometimes employed to report on short- to medium-term law reform issues that have a high public profile. There is wide support, however, for maintaining some stable structure to deal with the ongoing business of law reform in areas which cannot be dealt with by other means easily or on a cost-effective basis.

The existing legislation emphasizes the power in the Law Reform Commission to initiate projects. However, the capacity of the system of government to set aside its priorities for those selected by an independent body is extremely limited. The existing budget review process, annual reports to Parliament by the LRC and revisions to the commission's program of research only after long cycles of work, provide an inadequate opportunity for Parliament and government to influence the commission's priorities.

In recent years, the commission, while maintaining its independence, has formed closer links with the Department of Justice and the Ministry of the Solicitor General. The LRC has also attempted to ensure that new projects are timely and it now consults more broadly and carefully to ensure that its final recommendations have more immediate practical significance.

OPTIONS

The study team recommends to the Task Force that the government consider the following:

1. Make no changes to the LRC, other than to require that the recommendations in the Auditor General's report be responded to adequately and on a timely basis. A follow-up audit and/or a full effectiveness evaluation would be required as part of this option.

2. Amend the LRC Act to provide for:

    a. regular review and updating of the LRC's program of research;

    b. progress reports, reviewable by the department and possibly the Justice and Legal Affairs Committee as well;

    c. project references by the Minister of Justice to the LRC;

    d. work scheduling more closely integrated with ministerial or government priorities;

    e. an opportunity for the Minister of Justice and also the Justice and Legal Affairs Committee to comment on LRC-initiated research before it is incorporated into a formal research program;

    f. a timely response by the Minister of Justice to LRC recommendations;

    g. narrowing of the commission's existing mandate to emphasize proposals for reform which can be acted upon within a reasonable period of time;

h. limiting the LRC's post-reporting role to clarifying its recommendations, where required; and

i. specific authority clarifying that the Minister of Justice may refer projects to the commission for consideration on a priority basis at any time.

If a timely amendment of the LRC Act is not considered feasible, the LRC should be invited to enter into a memorandum of understanding with the government on the above matters. The study team, however, doubts the long-term effectiveness of a memorandum of agreement and notes that an amendment to the Act would permit some reorganization of the LRC. A memorandum of agreement, however, could be initiated immediately and form the basis for subsequent revisions to the Act.

3. Reduce the size of the LRC by reducing the number of long-term employees (or contractors) to a core of generalists who would, in turn, closely monitor and work with a larger number of short-term contract specialists and project leaders to ensure the production of timely and effective reports. This model would ensure flexibility and maximum privatization of the commission's work-in-progress in line with the proposal for the LRC advanced by the Study Team on Regulatory Review.

4. Consolidate the LRC functions with government policy planning functions.

Consideration could be given to assimilating the work of the LRC, possibly within a branch of the Department of Justice which would focus on larger or longer term projects involving fundamental reexamination of particular areas of law. Care would have to be taken to ensure that such a branch was insulated from the more crisis-oriented demands of policy planning within government. Independent advisory bodies might be struck to facilitate proper consultation on the work in progress of that branch. The study team notes, however, that there appears to be widespread support for an independent body such as the LRC to undertake the ordinary business of law reform that cannot be undertaken by task forces or royal commissions on a cost-effective basis.

CANADIAN HUMAN RIGHTS COMMISSION

OBJECTIVES

To promote social change leading to equal opportunity for all by reducing discrimination. This is achieved by handling and processing complaints impartially, advocating the principles of human rights, and encouraging compliance with and understanding of the Canadian Human Rights Act.

AUTHORITY

The Canadian Human Rights Act, S.C. 1976-77, c.33 amended by S.C. 1977-78, c.22 and S.C. 1980-81-82-83, c.111, 143.

DESCRIPTION

The Canadian Human Rights Commission (CHRC) administers the legislation which applies to areas of federal jurisdiction, including federal departments and agencies, Crown corporations, interprovincial and international transportation, telecommunications undertakings, banks, companies dealing with radioactive materials, and interboundary pipelines. It maintains close liaison with similar provincial agencies which administer provincial human rights legislation.

The Canadian Human Rights Act prohibits discrimination on 10 grounds: race, nationality or ethnic origin, colour, religion, age, sex, marital status, family status, disability or conviction for an offence for which a pardon has been granted.

The CHRC has a diverse, broad mix of powers and roles: it adjudicates, issues guidelines, provides policy advice to the government (e.g. regarding amendments to the Act), investigates, monitors and promotes the human rights issues under its purview through public education initiatives.

There are various options involved in the CHRC's operations once a complaint has been determined to fall within its jurisdictions. An investigation is conducted initially . The findings are submitted to the commission which can make the following decisions: not to take further action on the complaint; to dismiss the complaint; to appoint a conciliator to bring about a settlement; or to approve settlements where agreement has been reached by the parties; or, appoint a tribunal. Part of the current omnibus legislative package before Parliament (Bill C-27), proposes that a panel independent of the commission establish a tribunal when the commission is satisfied an inquiry by such a tribunal is warranted.

The CHRC is composed of the Chief Commissioner and a Deputy Chief Commissioner who are full-time members and three to six other members who may be full- or part-time. Other than headquarters of the commission, there are seven regional offices (Halifax, Montreal, National Capital Region, Toronto, Winnipeg, Edmonton and Vancouver). The main organizational components are: complaints and compliance, public programs and research and policy.

BENEFICIARIES

In employment matters, the beneficiaries are those employees employed in federal bodies. Employers also benefit through the possibility of having their employment practices approved by the commission.

As to provision of services, all Canadians obtaining services from federal bodies subject to the Act are beneficiaries.

EXPENDITURES ($000)

	82/83	83/84	84/85	85/86	86/87	87/88
Operating Ex.						
Salaries	4,411	4,823	6,484	6,687	6,687	6,687
O&M	1,576	2,153	2,691	2,643	2,643	2,643
Other Exp.						
Revenue						
Subsidies						
Capital	105	390	32	14	14	14
PYs	127	138	156	159	159	159

OBSERVATIONS

This is the third study of the CHRC this year. The regulatory review study team examined the commission and prepared a report for the Task Force. Also, the Auditor General tabled his report on the commission on October 24, 1985.

The justice study team received similar comments from employers and service providers as did the regulatory review study team:

a. the economic cost of implementing CHRC recommendations as to special programs, plans and arrangements to reduce disadvantages suffered by some individuals;

b. the excessive amount of time it takes the CHRC to resolve a complaint, due to personnel changes and lack of resources to deal with complaints; the investigation and conciliation stages might be incorporated into one;

c. certain investigators play a missionary role for human rights rather than investigate objectively; there is the feeling that the investigator is in fact preparing the CHRC's case for the tribunal;

d. the employer has the financial burden of disproving allegations through statistics and studies when a complaint is made to the CHRC;

e. the commission requests employers' comments on commission initiatives, for instance, as they relate to equal pay for work of equal value, but the final document hardly incorporates any of the comments;

f. the CHRC's authority to appoint tribunals may result, according to certain employers, in loaded tribunals in favour of complainants when the commission has sided with the complainant; Bill C-27 will correct this situation; and

g. settlements of complaints should not be publicized by the CHRC as the employer is seen by the public as having been guilty. The employer often sees a settlement in the interest of both parties without accepting guilt. Publicity surrounding a settlement entices an employer to attend before a tribunal and "take his chances" rather than be found guilty without a hearing.

Contrary to the regulatory review team's comments, in one case, a major employer and service provider had no difficulty with the commission attending as a party before tribunals to represent the public interest, as often the CHRC ensures that an unrepresented complainant has some representation.

Beneficiary concerns:

a. delays in the investigation of complaints sometimes make it more efficient for an individual to start an action in court under the Charter where possible, rather than complain to the CHRC;

b. an efficient CHRC with tribunals would be preferable to applications directly to courts because courts are perceived as more formal, more costly and generally more conservative;

c. if the CHRC used its authority more effectively to establish guidelines under subsection 22(2),matters could be more quickly resolved; and

d. there might be a privative clause in the CHR Act preventing review by the courts of tribunal decisions.

The justice team agrees with the regulatory review study team that the title Canadian Human Rights Commission is potentially misleading as the commission deals mainly with 10 grounds of discrimination in federally regulated bodies. The title may be misleading to individuals with human rights issues not falling within the scope of the CHRC's activities.

It was observed, and people consulted generally agreed, that the CHRC fulfills an essential function in carrying out its mandate. As noted by the regulatory review team, repeal of the Canadian Human Rights Act would leave a gap whereby federally regulated bodies would not be subject to provincial human rights legislation. The commission generally fulfills its functions fairly well with its limited resource allocation, the study team believes.

There appear to be some inconsistencies between federal bodies as to the rules with which employers must comply. For instance, the Canadian Transport Commission or the Department of Labour might make regulations on security or other matters with which employers must comply, but the employer might be found by the CHRC to be discriminating against certain individuals by complying.

The commission received 31,000 requests for information in 1984 of which 414 became complaints. This compares with 13,502 requests from September 1984 to October 1985 by the British Columbia Council, of which 302 became cases. It also compares with 22,001 requests to the Quebec Commission of which 412 became cases. In 1983/84, the Ontario Commission received 51,779 requests for information of which 1,599 new cases were opened. Ontario has 39 investigators to handle approximately 1,600 cases, whereas the CHRC has approximately 35 to handle 400 to 500 complaints received. Quebec has approximately 19 investigators to investigate approximately 300 new cases a year.

As noted above and in agreement with the Auditor General's report tabled October 24, 1985 and the Regulatory Review study team, there is considerable delay in investigating complaints. As of December 31, 1984, the CHRC had a backlog of 682 cases. The Auditor General's report looks at this problem in detail.

Delay might also be caused by the separation of the investigation and conciliation stages. Ontario combines both stages. It was noted that separation of the two stages might cause duplication as the coordinator has to learn what the investigating officer already knows. It is more time-consuming and may cause morale problems among personnel as the investigating officer may feel he or she should continue to be involved in the settlement process and the conciliation officer may be critical of the investigation.

As well as delay at the investigation and conciliation stages, there may very well be too many potential levels at which a human rights issue could be considered. When a complaint is received the potential levels of review are as follows:

a. investigation;
b. conciliation;
c. tribunal of one or two;
d. appeal to tribunal of three; and
e. application for review before the Federal Court of Appeal.

The commission may at any time establish a tribunal of one to three persons. If a tribunal of three is established, there is no further appeal before a tribunal.

Some observations were made that human rights hearings should be before the courts rather than a tribunal or that there should be a full appeal to a superior court rather than the limited right of appeal which exists under section 28 of the Federal Court Act.

There may be some overlap with provincial commissions in human rights education and research.

Some confusion exists in the public concerning which organization, among the CHRC and its provincial counterparts, should deal with complaints. However, it was observed that all human rights bodies are clear on their respective jurisdictions and cooperate in referring complainants to the proper body.

In the view of the study team, even with Bill C-27, there could still be a perception that a tribunal is not objective, as, pursuant to subsection 22(2) of the Act, the CHRC may issue guidelines expressing its opinion setting forth the extent and the manner in which a provision of the Act applies in a case or class of cases. Strangely, the tribunal is bound by the commission's opinion contained in the guideline.

There is some concern that Bill C-62, the new employment equity bill, may create the need for more personnel at the CHRC if it is required to oversee compliance by employers.

It should be noted that, overall, comments obtained were generally favourable to the CHRC and its activities. It was often mentioned that people at the commission are devoted to the cause of human rights and the commission does fairly good work with limited resources.

OPTIONS

The study team recommends to the Task Force that the government consider the following:

1. To reduce delays in processing complaints:

    a. the CHRC could make greater use of guidelines under 22(2), but not bind tribunals;

    b. set regulatory or administrative time limits for investigations;

    c. review rapid case resolution processes in existence in certain provinces;

    d. look at the possibility of combining the investigation and conciliation stages; and

    e. establish tribunals as soon as possible and, as a rule, with a panel of three.

2. To ensure independence of tribunals:

    a. Bill C-27; and

    b. tribunals should not be bound by CHRC guidelines on interpretation of the Act and the Act should be amended accordingly.

    The CHRC could perhaps play a coordinating role with its provincial counterparts respecting education and research in human rights whereby all bodies could benefit from the efforts of other bodies. Overlap could also be avoided. Human rights commissions do currently meet on an annual basis.

3. Consider amending the title Canadian Human Rights Act.

    The CHRC should give more consideration to the cost of compliance by employers with CHRC initiatives.

    Further study should be undertaken to compare the relative merits of having human rights cases heard by the courts rather than tribunals, as is the case in certain jurisdictions.

PUBLIC LEGAL EDUCATION AND INFORMATION PROGRAM
Department of Justice

OBJECTIVE

The Public Legal Education and Information Program has three objectives:

a. to help improve access to justice, especially for disadvantaged persons, by improving the local availability of information, in a comprehensible form, about the law and the legal system;

b. to provide timely legal information to the public about the reform of federal laws for which the Minister of Justice is responsible and which have a major impact on the public; and

c. to help develop, through research and pilot project activity, means of making laws more comprehensible to the public.

AUTHORITY

The Appropriation Act.

DESCRIPTION

In May 1984, the Department of Justice was authorized to proceed with a Public Legal Information Program with the objectives outlined above.

To improve community access to justice by means of improved public legal education and information (PLEI), the department established the Access to Legal Information Fund:

a. to provide start-up funding to PLEI organizations in the four provinces and two territories where none then existed to encourage the development of a national PLEI network; and

b. to provide project funding to community associations and existing PLEI organizations to meet the legal information needs of disadvantaged groups such as the handicapped, women, Natives, youth and visual minorities.

A lawyer-editor was engaged to develop public legal information about justice and law reforms (e.g. sexual assault, divorce reform, etc.) with the aid of a small contract and publications budget and the assistance of the department's public affairs section.

As well, fundamental research has been undertaken into the ways to make laws more understandable and increase public involvement in law reform. In addition, a technical workshop is proposed with working experts (legislative draftsmen, plain language law exponents, public legal information specialists, etc.), to review the state of the art and identify ways of encouraging the enactment and dissemination of laws that have a major public impact in a more comprehensive form.

BENEFICIARIES

The Canadian public.

EXPENDITURES (\$000)

85/86	86/87
1,105	1,255

OBSERVATIONS

Beneficiaries (four provinces, two territories) of the start-up core funding portion of the program have responded positively. Federal grants have been supplemented by local resources and plans are developing for local funding on termination of the federal grants (after three years). In the view of the study team, it is too early to measure the impact of this aspect of the program, but it should be viewed as successful if those provinces and territories involved maintain an effective public legal education and information program on termination of federal funding.

There is a significant risk of overlap and duplication both within the government and with the provinces. When the program was established, the Department of Justice met with the Ministry of the Solicitor General to outline its priorities and they have continued to communicate on a regular basis. Apparently they have been able to draw distinct lines of responsibility. Overlap or duplication may exist with other government departments or agencies, but have not been identified. Federal/provincial concerns regarding PLEI are discussed in the course of other consultations through established committees. It is important, in the study team's view, to recognize that PLEI has implications for the administration of justice, a provincial responsibility.

Funding of $200,000 has been allotted to disadvantaged groups for 1985/86. Applications exceed available funds, partly as a result of a decrease in resources available elsewhere. Only short-term funding is available, usually for three years. Wherever possible, attempts are made to obtain third- and fourth-party financing or in-kind support.

A research component of the program is charged with the responsibility of measuring the effectiveness of the various components. The program is too new for any assessment to be made at this time.

The Bureau of Program Evaluation and Internal Audit is to review the effectiveness of the program within the first three years of its operation to determine whether it should be continued. Effectiveness of the program, therefore, cannot be ascertained at this time.

OPTIONS

The study team recommends to the Task Force that the government continue the program with monitoring in future to identify the extent to which it is successful in carrying out its mandate and to ensure that no overlap or duplication exists between the federal government and the provinces.

LEGISLATIVE PROCESS

THE PREPARATION OF LEGISLATION

CHARACTERIZATION OF THE PROCESS

Law-making is one of the principal functions of the state. Legislation, along with policies, programs, budgeting and administration, is one of the fundamental elements of government.

In the general context of government, the legislative process is best perceived as a single continuum, extending from the formulation of a policy proposal requiring legislation, through the preparation of the necessary bill and the attendant regulations and other legal instruments, through the enactment and bringing into force of all of these, to their implementation and ultimately to their textual revision and policy review. For purposes of the Task Force's investigation, the preparation of legislation is understood to refer to the initial phase of this legislative process.

The branches of government most closely involved with this area of work are the Department of Justice and the Privy Council Office. The most visible product of their labours is the actual body of legislative texts which they make ready for approval: bills to be enacted, regulations and Orders-in-Council to be adopted. That is by no means the full extent of their activity, however. They also tender advice with regard to the composition of the government's legislative program. As well, they have an input from the policy, but not the political perspective into government decisions relating to the scheduling of the consideration of legislation by Parliament. On the basis of these parliamentary scheduling decisions, they also arrange the priority and urgency with which legislation is prepared.

PERCEPTIONS, BENEFITS AND DIFFICULTIES

The decisions discussed and the legislative texts which are drafted as a consequence lie at the crossroads of law, public administration and politics. This entire domain of public service and parliamentary activity constitutes an integral system. Yet, at present, the overall conceptual framework that would treat this process as a unified sequence of events, rather than as a series of individual and disjointed decisions, seems to be lacking. Perhaps for this reason, there is little recognition of the singular importance of the legislative process either within government or among other groups in society. As the entire process is unknown, its introductory portion, during which legislation is prepared, is given even less attention.

The phases of the legislative process following preparation, namely enactment, implementation and review, are beyond the mandate of this study. It is worthy of note, however, that the procedure of enacting legislation was one of the topics recently examined by a Special Committee on the Reform of the House of Commons under the chairmanship of Mr. James McGrath, P.C., M.P. It is thus not only appropriate but also timely that the preparative aspect of the legislative process also be examined.

The legislative establishment has, during the past decades, made a significant contribution to the quality of democratic government in Canada. Initially, the drafting of legislation and regulations was undertaken by individual departments. More recently, a centralized office has been established to deal with each of these types of legal text. Together, they apply a standardized drafting technique, pay strict attention to the use of both official languages and have developed advanced systems for crafting a great volume of legislation. Canada can justly claim to have an extremely sophisticated method of preparing legislation.

As a result of the higher level of interest in other aspects of government, however, the organizational structure within which this function is carried out has not kept pace with advances in the law. From the managerial as well as institutional point of view, difficulties have been allowed to develop and to remain unattended. In the most succinct terms, the system of preparing legislation is staffed, funded and equipped to handle the lower edge of the spectrum of its workload. In the past few years, though, the demands for the legislative process' output have been consistently high and do not show any signs of abating.

In institutional terms also, the lack of central planning in the field of legislation has rendered possible the growth of layer upon layer of ad hoc development. Different aspects of the legislative process are now dealt with by a multitude of units in several departments.

The examination undertaken by the Task Force provides a suitable opportunity to take a close look at the organizational aspects of the preparation of legislation. For purposes of convenience, the proposals which follow have been grouped into three packages. Those dealing with management of the process could be introduced in the immediate future. The next group, dealing with information systems, could be dealt with in the short to medium term. Further study is needed before the last proposals, regarding institutional matters, can be implemented. That study should be undertaken within the short term, even if the results that emanate from it are put in place only in the medium to longer term.

REFORMS: THE MANAGERIAL PACKAGE

General Matters

The most pressing change to current practice which needs to be put in place is an increase in the number of drafters of statutes and regulations. During the past few years, in addition to the normal progression of the workload of these officials, several other factors have greatly increased the volume of their assignments. Firstly, enactment of the Charter has required the amendment of many laws. Major changes in several areas of law, such as transport, energy, consumer and corporate affairs, pension reform, and financial institutions, have also necessitated their services. The revision of statutes has been undertaken as well. More recently, a system of legislative committees has been added to the functioning of Parliament. These developments have all added to the burden of drafting services and are expected to continue to do so.

The situation is even more critical with respect to regulation, where the workload has grown exponentially during the last decade. Despite the deregulation of several spheres of economic activity, staffing in the Legislation Branch, the Tax Counsel Division, the Statute Revision Commission and especially the Privy Council Office has not kept pace with the demands imposed on these offices. An immediate increase in the number of drafters in each of these offices is required, in the view of the study team.

Simultaneously, it seems necessary, in the study team's view, to establish a system of tasking drafters that would make better use of human resources. To this end, the entire pool of drafters might be considered as a unified resource upon which the managers in charge of various functions could call to have them perform statute drafting, statute revision or regulatory work, according to fluctuating needs. The expertise required to deal with each of these functions is the same. Such a combination of professional skills is therefore possible. A parallel redeployment of all services ancillary to drafting and regulation revision work would also seem in order.

The relationship between each department sponsoring legislation or regulations, and the drafters of these texts is vital. Several measures could be taken to facilitiate its proper functioning. Departments could indicate to drafters the priority attached to each project, so that bills of a purely legal or technical nature could be prepared, as well as the more politically attractive ones. Such advice on prioritizing would nevertheless have to be superseded by the decisions Cabinet makes regarding the overall legislative program. Moreover, in the process of instructing drafters regarding bills of a difficult technical nature, use could be made of annexes in which the departmental legal services set out their proposals in the form of pre-bills, as a guide to the drafters. Also, in respect of both the drafting of statutes and the examination of regulations, drafters should, in the view of the study team, be encouraged to have a closer working relationship not only with the lawyers of the sponsoring department, but also with that department's policy staff.

As a result of the expansion and combination of the human resources available, further changes in procedure would become possible. In instances where new legislation is being readied for the consideration of Parliament, drafting teams could be constituted, charged with preparation not only of the bill, but also of the related regulations. Depending on the schedule of the House of Commons, in some cases such an approach might even enable Parliament to see a draft of the regulations that will eventually surround the law, while it deliberates on that subject matter.

Familiarity with the subject matter of a text of law is indispensable to achieve consistency in the drafting of the bill itself and of the amendments to it. It would therefore be opportune to enable drafters to follow their files all the way through the legislative process. Once the actual drafting is complete, their role would not end with participation in the meeting of the Cabinet Committee on Legislation and House Planning at which these items are considered. They would also attend Parliament during important phases of the second reading debate. Most importantly, they would continue to assist the government throughout consideration of the bill by parliamentary committees.

The routine presence of the government's legislative drafters in Parliament would render useful a clarification of the division of functions between these officials and the respective Law Clerks of the House and the Senate. As no precise division of labour exists at present, many ad hoc practices are followed. In this context, the study team notes that Standing Order 93 of the House of Commons, which assigns the duty of drafting and printing legislation to "the Joint Law Clerks of the House", no longer conforms with current practice and should be considered for revision in the view of the study team.

There is one element critical to assuring that the reforms proposed here be successful and that the system of preparing legislation operate consistently. That is the establishment of clear legislative priorities by the government and their continuous communication to officials. This setting of priorities is itself often based on the policy advice of officials. There is thus a need for the closest cooperation and trust between officials and the political masters of the state apparatus. In this process of prioritizing, continued use of the Cabinet Committee on Legislation and House Planning and of its secretariat can only be beneficial.

Issues Specific to Certain Participants

Specific reference must be made here to legislation arising out of the budget. The preparation of this type of legislation is a particularly difficult exercise, given the complexity of Canada's tax laws. Even with this consideration in mind, the time between presentation of the budget and the introduction of the legislation required to put its provisions into effect has lengthened in recent years. To resolve this situation, the study team proposes modifications. First, that members of the Tax Counsel Division be allowed to begin drafting even before the day on which the budget is presented. More importantly, once the Minister of Finance has made his or her presentation in the House, that the Tax Counsel Division be made the nucleus of a special drafting task force, using drafters made available to it out of the pool of professionals discussed previously. During preparation of the legislation emanating from the budget, this work would have priority over that on most other bills.

The role of the Statute Revision Commission must also be highlighted. The need to enable this body to publish a revision of the federal statutes within the shortest possible delay is patent. The study team suggests that it would be very useful if this revision were made available not only in bound form, but also in loose-leaf. To give full legal sanction to this latter version, amendments to the Statute Revision Act and the Canada Evidence Act would need to be promulgated. The commission would not only keep the statutes revised, but also arrange the revision and consolidation of the regulations and publish them in loose-leaf form as well.

REFORMS: THE INFORMATIONAL PACKAGE

Legislation is an area of practice which attracts few lawyers and is an aspect of public administration uncharted by most experts in that field. Its importance to the operation of the state is nevertheless demonstrable. An effort to increase the awareness of officials regarding this topic can thus only be beneficial. Under this rubric, the most urgently required educational program is that intended for government lawyers. While the Legislative Drafting Program of the University of Ottawa has graduated many drafting experts, that course is too lengthy for most departmental lawyers. For their benefit, a series of short programs is required in the view of the study team. Such teaching would be directed at providing the fundamental principles, rather than the precise techniques, of drafting. Additional seminars on the method of instructing drafters would also be appropriate.

In the study team's view, there is also a need for development of courses of a more general nature, aimed at officials otherwise involved in the legislative process as well as for the exempt staff of ministers or other officers of the state. The most appropriate forum for such courses would seem to be a politically neutral body, such as the University of Ottawa, the Parliamentary Centre or the

Institute for Research on Public Policy. Officials actually involved in the legislative process should, however, not only be involved in the teaching of such courses, but also in the preparation of materials, such as books, on the subject.

Investigation by the study team has shown that several provincial governments use federal legislation as a model for their own drafting, but are not adequately informed as to legislative developments in the federal sphere. To fill this void, the opportunity should be made available to the chief legislative counsel of each Canadian jurisdiction to receive copies of bills introduced, acts having received Royal Assent or Hansard, on a systematic basis.

REFORMS: THE INSTITUTIONAL PACKAGE

The Next Step

The managerial and informational reforms proposed above are designed to resolve only the current problems in the system of preparation of legislation. In the course of the study team's examination of this subject matter, it has become apparent, however, that a more long-term view of the system may also be called for. In this perspective, serious consideration of the possible need for additional reforms of an institutional nature should be undertaken. The purpose of such changes would be to modernize, rationalize and simplify the structures within which legislation is prepared.

The preparatory phase of the legislative process is primarily within the administrative jurisdiction of the Minister of Justice, while the enactment phase is the responsibility of the Government House Leader. The in-depth investigation of the system which is proposed here would serve to look at whether maintenance of this division is organizationally logical. Moreover, legislative texts are, according to constitutional practice, prepared at the bidding of the government, that is of Cabinet, rather than for one of its members in particular. Review of the existing structure might therefore show that reform would only be the institutional recognition of an administrative reality. A further topic for analysis is whether the present apportionment of responsibilities between ministers prevents the legislative function of the state from achieving the heightened profile that that element of government deserves.

The study team proposes that such an investigation take account of the above considerations and deal with the merits of concentrating ministerial responsibility for all phases of the legislative process in the hands of a single minister, presumably the Government House Leader. Such a reform would gather under one roof the diverse public service group involved in the preparation of legislation. A department of the type envisaged would not only encompass the lawyers dealing with statutes and regulations. It might also be the most appropriate home for the Office of Regulatory Reform, currently in the Treasury Board Secretariat. With a new mandate, this group could become an Office of Legislative Analysis, looking at the effects of combinations of legislative texts. This new department could also be the most convenient branch of government to assume responsibility for the Legislative Drafting Program of the University of Ottawa. With these resources the minister could do strategic planning for the entire process.

A study such as that proposed would show that a single departmental structure could clarify the lines of responsibility of public servants involved with legislation vis-à-vis Cabinet. It would also point out that the suggested department could protect the Minister of Justice from the possibility of being in situations where his interests with respect to the drafting of legislation conflict with those of his Cabinet colleagues.

The Long-Term Option

The extent to which responsibility for various aspects and phases of the legislative process is concentrated in the hands of the Government House Leader is also a proper subject for further consideration in the study proposed above. In the long term, it may be suitable for Canada to establish a completely unified department of government, forming part of the executive branch, to deal with all matters related to a completely unified legislative process. The inspiration for this scheme is the administrative side of the Conseil d'Etat of France, whose officials deal with the substance and form of statutes and regulations and also give advice regarding the appropriateness of each, from a policy perspective.

Establishment of a Council of State type of ministry would complete a long trend of historical development of institutions dealing with legislation. A department devoted exclusively to the management of the legislative process might, in the long run, also provide an appropriate counterpart to the roles already played by departments dedicated to the other fundamental aspects of government. The Privy Council Office fulfills this function in the policy coordination field, while the Treasury Board Secretariat plays a similar role in the areas of financial management and administration.

LEGISLATIVE DRAFTING PROGRAM
Department of Justice

OBJECTIVES

The drafting of legislation, regulations and other statutory instruments is one of the fundamental functions of the state. In this context, the prime objective of the legislative drafting program established at the University of Ottawa at the encouragement of the Department of Justice is to train legislative drafters for the benefit of that department.

AUTHORITY

This program is non-statutory. Authority for the operation derives from the general mandate of the Department of Justice and arises, in addition, from the responsibilities relating to the legislative system assigned to the department by the Canadian Bill of Rights, the Statutory Instruments Act and the Statute Revision Act.

DESCRIPTION

Originally established in English only in 1970, the course was viewed as a way to relieve a chronic shortage of drafters of legislation. In 1980, a French section was added to the program.

The course is part of the curriculum of the Faculty of Law of the University of Ottawa and is offered, in each official language, to a maximum of eight to 10 students a year. Of this number, four students in the English program and four in the French program are recipients of Department of Justice fellowships. The others are either supported by other agencies or governments or attend at their own expense.

The program is conducted at the graduate level and is open to persons called to a bar or to those who have obtained a degree from a recognized faculty of law. It is intended to train specialists in legislation and is therefore geared to offer drafting skills more advanced than those required for the preparation of private legal documents, such as contracts or wills.

The English language program consists of 370 hours of seminars and lecture courses as well as practical exercises and assignments dealing with legislative drafting, the legislative process, comprehension of legislation and legislation and Canadian federalism. In the French program, students follow the same curriculum with an additional 30 hours a year of teaching on syntax and stylistics. A student who takes these courses is eligible for a Diploma in Legislative Drafting. One who, in addition, does a thesis in the field of public law under the supervision of a member of the Faculty of Law of the University of Ottawa is also eligible for a Master's degree in law.

While the University of Ottawa sets the curriculum, the Department of Justice controls the selection of the director of the French and English sides of the program.

Since the inception of the program, 122 students have graduated from it. Of these, 47 are currently employed by the Department of Justice, another federal department or Parliament. Two others are former Justice employees. Twenty-seven work for provincial or territorial governments, 23 others work abroad; and four are currently involved in academic pursuits. The remaining 19 could not be traced.

BENEFICIARIES

Those who draw the most tangible benefit from the program are the eight to 10 students a year who take the course.

The legislative drafting program is also of great benefit to the federal government, since the largest proportion of the graduates work at the federal level. In this category, the principal beneficiary is the Department of Justice, while the Legislative Programming Branch, the Tax Legislation Unit and departmental legal services all absorb followers of the course. Other graduates are employed at the House of Commons, the Senate or in various other federal functions relating to legislation, such as the Aeronautics Act Task Force.

The provinces and territories also benefit from the program since a number of graduates of the course are part of their legislative drafting units. These jurisdictions also draw an indirect advantage from the program in the sense that their governments, on occasion, request federal assistance for their drafting needs. Such is the case at present with Manitoba. Having graduates of the course ready to be lent out is an advantage to both levels of government in such circumstances.

EXPENDITURES

The expenditures incurred for this program consist mainly of the eight to 10 fellowships awarded to the students selected to attend the course, and their registration and tuition fees. There are also grants covering the salaries of a director-professor and a secretary for each language group.

The figures for the 1984/85 Academic Year are:

Fellowships 8 x $10,250	$82,000
Registration and Tuition 8 x $1500	$12,000
Salaries of Director-Professors 2 x $25,540	$51,080
Salaries of Secretaries 2 x $19,260	$38,520
TOTAL	$183,600

When the Department of Justice sends employees on this course, it continues to pay their salaries and covers their tuition expenses but does not offer them bursaries. In this way, the overall costs associated with the program are somewhat varied from year to year. Administration requires approximately one-tenth of one person-year.

OBSERVATIONS

The need for legislative drafters is constant and will continue as long as there are legislative bodies enacting laws. Legislative drafting is considered a highly-specialized branch of the legal profession. It is a difficult expertise to master, requiring a longer apprenticeship than several other forms of practice. While there is no substitute for that experience, graduate university training such as that provided by this course can serve as an invaluable boost to a drafter in the early stages of a career. On a larger scale, this type of course can assure the government agencies charged with drafting a reliable pool of talent from which to draw.

The University of Ottawa drafting program provides another significant benefit to federal authorities. It relieves senior drafters and managers from the very time-consuming task of having to provide on-the-job training to beginning drafters and it thus frees them for more productive duties.

This program is unique in several ways. At present, it is the only complete university program dealing with this subject matter. At Laval and Dalhousie, only partial programs exist. Within the Quebec Ministry of Justice, some thought has been given to an in-house training program to meet the specific drafting needs of a civil law jurisdiction. Were that program to be established, it would not conflict with the one discussed here. Quebec government officials and other Québec students would not disappear from the University of Ottawa program.

ASSESSMENT

This program is considered a necessity and a success by officials of the Department of Justice. It provides an answer, at a relatively low cost, to a very obvious need. The Internal Evaluation Directorate of the department has termed it "both essential and most rewarding".

The Treasury Board Secretariat has also praised the program which "provides an efficient mechanism for training a drafter in the rudiments of his trade". Its elimination would create a vacuum which would have to be filled, since the need for trained drafters would not disappear.

OPTIONS

The determining considerations in regard to the Legislative Drafting Program are the general need for it, its success as a method of training drafters and the relatively low cost of continuing it. The study team recommends to the Task Force that the government consider continued Department of Justice funding and support of this program.

CIVIL LAW/COMMON LAW - EXCHANGE PROGRAM
Department of Justice Canada

OBJECTIVES

The stated objectives of the program are to:

a. promote an understanding of the civil law system among common law students and of the common law system among civil law students;
b. promote bilingualism among lawyers; and
c. promote national unity and multiculturalism.

Officials from the Department of Justice indicate that the first of the above objectives is the highest priority.

AUTHORITY

This is a non-statutory program operated by the Department of Justice, Programs and Projects Administration Section. Authority for its operation derives from the yearly Appropriation Act. Most recently, this item was included under Vote No. 5 of Appropriation Act No. 2, 1985/86.

DESCRIPTION

Since 1973, the Department of Justice has sponsored a summer exchange program between civil and common law schools. Under the program, a number of second- and third-year common law students from across the country attend a seven-week course in French on the basic aspects of civil law at the University of Sherbrooke. An equal number of civil law students attend Dalhousie University to study common law in English. At the end of the seven-week period, both groups participate in a three-week comparative law program, held in Sherbrooke in 1985. Prior to 1985/86, sixty-eight students participated in the exchange. During 1985/86, only 48 students participated due to an across-the-board reduction in departmental spending.

Students who participate in the program must have some prior ability in the second official language. Applicants are screened by their universities and successful applications are referred to a national selection committee consisting of Department of Justice staff and professors from the participating law schools. The major criterion for selection is academic performance in the law programs, with participants chosen from the top 50 per cent of their class. Participants each receive a scholarship of $1,500. In addition, the program funds their travel expenditures, lodging, food and incidentals, as well as their socio-cultural activities. The total average cost per student amounts to $5,000.

Primary administrative support is provided by the two universities, with the program paying the participating professors' and secretaries' salaries. It also funds the textbooks and other teaching materials. Further administrative support and coordination is provided by the Department of Justice.

A 1981 program evaluation conducted for the Department of Justice concluded that the program is well-administered, efficient and supported by Canadian law schools. It did, however, question whether the program was the best means of achieving each of its broad goals.

The 1983 Law and Learning report of the Consultative Group on Research and Education in Law praised the program and the department's efforts in achieving the goals. It encouraged other groups to emulate that approach.

The department's Bureau of Program Evaluation and Internal Audit in 1983 concluded negatively on the effectiveness of this approach, notwithstanding what is described as laudable objectives and low administrative costs. The evaluation concluded that the program had no demonstrable value to the department.

In its assessment, the Treasury Board Secretariat recommended that the program be abolished. No rationale for the recommendation was given.

The Duff-Rinfret Scholarship program provides funds to Canadian lawyers for graduate study in federal law at the Master's level. At the present time, there is no programmatic connection between the scholarship and exchange programs, although departmental staff have considered the possibility of utilizing the theses and other documents produced by graduates of the Duff-Rinfret program to facilitate meeting the objectives of increasing understanding of the civil and common law systems among lawyers.

The operation of language and multi-cultural programs is the responsibility of the Secretary of State. None of the programs of that department appears to overlap with the civil law/common law exchange program.

The Canadian law deans have expressed to the Department of Justice their interest in establishing a comparative civil and common law program. At present, no such program exists, although at three schools, it is possible to do combined studies in common and civil law in order to obtain twin law degrees. Limited teaching of the "other" system is available at five of the remaining 18 schools.

EXPENDITURES ($000)

	81/82	**82/83**	**83/84**	**84/85**	**85/86**
Salaries & Wages	38.8	29.0	31.3	33.1	34.8
Other O&M	.5	.5	.5	.5	.5
Contributions	264.8	309.0	340.4	328.8	234.6
TOTAL	303.6	338.0	372.2	362.4	269.9
PYs	0.6	0.6	0.6	0.6	0.6

The 30-per-cent budget reduction in 1985/86 resulted from a decrease in the number of students participating in the program from 68 to 48. The purpose of this decrease was to achieve expenditure reductions for the department.

Department of Justice administrative support is provided by a Programs and Projects Officer and secretary. Approximately 0.6 person-years can be ascribed to the program, consisting of 0.3 of the person-year of each.

BENEFICIARIES

The direct beneficiaries of the program are the 48 students who participate annually. Since 1973, approximately 680 students have benefited. It is assumed by those involved that the legal profession as a whole also benefits because of:

a. generally higher levels of knowledge of the two legal systems among a greater number of members of the profession; and

b. greater proficiency in both official languages and familiarity with both cultures among a greater number of members of the profession.

The development of comparative law course material by instructors is also seen to be of benefit because of the current lack of such material in the law schools.

The benefit of the program to the Government of Canada and, through it the population as a whole, is less clear. Statistics have not been kept on the career paths of participants. It is known that some are employed by the government, but a greater number have obtained positions as law clerks to judges and as professors in law schools.

OBSERVATIONS

Accepting the legitimacy of the objective of increasing knowledge of the two legal systems among lawyers generally, two questions must be addressed:

a. Is it appropriate to expend federal resources to achieve the stated objectives? and

b. If such expenditures are appropriate, is this the most effective and efficient means to achieve that objective?

With respect to the first question, it is clear that in the absence of federal expenditures, fewer lawyers would have an adequate level of knowledge of the "other" Canadian legal system. The value of this knowledge is difficult to quantify, but clearly there is some. Interprovincial trade and the mobility rights now guaranteed by the Charter necessitate increased interaction between the two legal systems. Familiarity with both does serve to facilitate the legal aspects of commerce and interaction between businesses and individuals between Quebec and the rest of Canada and supports federal objectives and responsibilities for national unity as well as trade and commerce.

The study team questions, however, the degree to which the exchange program, as it currently operates, meets its objectives. In addition, and while acknowledging that without federal government resources the program would probably not survive, the study team questions the need for the Department of Justice to exercise direct administrative responsibility for a program delivered through universities.

OPTIONS

The study team recommends to the Task Force that the government consider the following:

1. The program, as currently constituted, does not reach a wide audience and seems to undertake functions beyond the mandate of the Department of Justice. One option is therefore to replace it with a transitional scheme leading to the establishment of new Centres of Comparative Law. This solution would not only focus the program into teaching of the "other" system, but would also make it available to a far greater number of students. Adoption of this option would include the following elements:

    a. retain the present program for 1986 only. Planning for the upcoming session is at an advanced stage and its immediate abolition would be disruptive;

    b. as of the 1987/88 academic year, establish on a transitional basis a new Program for Visiting Professors of Comparative Law;

    c. during this transitional phase, the department would publicize among the eligible law schools its long-term goal of increasing the number of institutions at which comparative law programs of study are established permanently. For this purpose, the law schools could use information gathered during the transitional phase regarding the demand for, and interest in, comparative law courses; and

    d. on the basis of that information, they would, with the consent of the department, select one civil law school and one common law school where these new programs would reside permanently.

    Under this plan, in each academic year, one common law professor would be sent to a civil law school and one civil law professor would be sent to a common law school. The Department of Justice would fund these movements to a maximum of $60,000 per professor, which would include both salary and moves. Each visiting professor would be required to teach at least three courses per term. Two of these would be basic courses in the professor's own legal system, and the third would be comparative law.

The primary administration of this system would be entrusted to the Canadian law deans. The department could retain the right to set standards and supervise compliance. Any professor of an accredited law school would be entitled to participate in the programs. However, only those law schools which do not maintain programs of studies in both legal systems, would be entitled to take in visiting professors.

As the program in each of the two selected schools started up, the department's funding for each of the visiting professorships would be terminated and rolled over into each of the "settled" programs. From that point on, the funding would be even more effective, as it could be used for teaching and research, with no necessity to pay moving expenses.

2. Another option is outright termination of the program. This alternative is based on the notion that if the "marketplace of ideas" requires the education of a greater number of students in the two legal systems, universities will be able to provide them without governmental inducement or assistance.

OFFICE OF REGULATORY REFORM
Treasury Board Secretariat

OBJECTIVES

The Office of Regulatory Reform is a part of the Administrative Policy Branch of the Treasury Board Secretariat. Its primary functional goals, directed at benefiting the private sector, are to coordinate the reform of the regulatory process throughout the government and to reduce the regulatory burden on the Canadian economy. It also has a parallel goal of an informational nature aimed at the public sector, namely to inject into the operations of government the idea that regulation entails an economic cost.

AUTHORITY

The establishment of a group of officials to deal with the policy and procedural aspects of regulation-making is founded upon the government's general interest in improving the efficiency and effectiveness of its public administration. The decision to deal with this aspect of the legislative process in particular was made by executive order in 1979, in response to the then-increasing interest in regulatory reform and deregulation.

DESCRIPTION

Starting with the February 1978 First Ministers Conference on the Economy, the Government of Canada gave increased consideration to the effect on the national economy of unbridled regulation by its various departments and agencies. One of the measures undertaken was the establishment in October 1979 of a Task Force on Regulatory Reform.

In October 1980, Cabinet endorsed an 18-month regulatory reform work program which had as its aims the improvement of public administration through reform of the federal regulatory process and the reduction of the regulatory burden on the economy. Simultaneously, it established the Office of the Coordinator, Regulatory Reform (OCRR) in the Treasury Board Secretariat. In 1982, when the original program was supposed to terminate, the regulatory reform mandate was reconfirmed in an exchange of letters between the Prime Minister and the President of the Treasury

Board. OCRR was then transformed into the Office of Regulatory Reform (ORR) and made permanent.

The significant accomplishments of the OCRR in its early stages were the preparation of an omnibus bill to repeal obsolete federal statutes, the preparation of legislative amendments to reduce and rationalize federal records retention requirements, and general work toward improving private sector access to the regulatory process.

A significant practice initiated by OCRR and continued by ORR is the preparation of regulatory agendas. A regulatory agenda is a twice yearly annex to the Canada Gazette which consolidates notice of potential regulatory initiatives of those departments and agencies which are the most active producers of regulations. Regulatory agendas contain information on regulations intended to be made, regulatory policy reviews and analyses, regulatory program evaluation schedules and information on completed regulatory actions.

The ORR is also mandated to support the participation of public interest groups in the regulatory process. This area of activity is comparable in the regulatory field to the function of the Department of Justice in respect of the Charter-related court challenges program. It is not clear what action ORR has taken in this regard.

One of the ORR's principal activities is to work with the Socio-Economic Impact Analysis (SEIA) program. SEIA requires that departments carry out and publish detailed socio-economic analyses for proposed major federal regulations or regulatory amendments in the areas of health, safety and fairness.

The government's regulatory reform goals include a variety of other policies and practices intended to simplify regulatory activity and the economic effect of regulations.

BENEFICIARIES

While the tangible benefits of the ORR's work to date have been somewhat limited, its activities have provided a definite advantage to the regulated industries. The introduction of regulatory agendas, in particular, has given an early warning to various elements of the private sector of regulatory changes that are to be expected in their respective fields of endeavour.

The extent to which federal government officials have derived a benefit from the ORR's activities, in the sense of being sensitized to the economic cost and social effect of their regulatory activities, as was intended, is much less certain.

EXPENDITURES ($000)

The ORR staff, reconstituted as the study team on the Regulatory Program, analysed the office and provided the following figures.

	82/83	**83/84**	**84/85**	**85/86**
Salaries	189	277	408	520
O&M	155	210	187	157
TOTAL	344	487	595	677
PYs	5	7	10	10

OBSERVATIONS

The ORR program is scheduled for review at the end of 1985/86. The office's members have recommended that, in the absence of a regulatory reform policy requiring central coordination, the program be terminated in its present format.

ASSESSMENT

During the past few years, increasing attention has been paid to the twin topics of regulatory simplification and deregulation. Considering the enormous breadth of regulatory activity, no mass repeal of regulations can be envisaged, however, without inducing chaos in the federal legal system. In these circumstances, the existence of an office to monitor regulatory activity in some fashion is a necessity. After an initial surge of interest in the late 1970s and early 1980s, regulatory reform no longer seems to hold the interest of the government. The study team believes that is why the essential element to make the ORR function properly, a clear mandate, is at present missing.

The ORR is a prime example of an office established to carry out a legitimate goal, following which the government loses interest in the project but makes the office permanent. The answer to this situation, in the view of the study team, is to assign a clear new mandate to the officials and to place their office within a department where it is most apt to carry out the new functions assigned to it in a renewed mandate.

The problems thought to exist when the original task force was established continue today and will go on needing to be resolved. A permanent office to coordinate regulatory functions therefore is required.

In addition to its principal mandate of simplifying the regulatory process and lightening the burden on industry, the reconstituted office could inherit several policy goals such as the coordination of federal regulatory work with that of the provinces and territories. Equally important is the continuation of the office's work to inform public officials about the regulatory process and to sensitize them to its effects on the private sector.

OPTIONS

Four serious alternatives may be considered: winding-up of the program; dispersal of ORR's current activities to the various regulatory departments and agencies; retention of the program within the Treasury Board with a redefined mandate; or transfer of the program to another branch of government where it would be more properly situated, coupled with a new and more comprehensive mandate.

Termination of the regulatory reform program would provide an immediate saving of less than $1 million to the Treasury Board's expenditures. It would, however, eliminate the possibility of improving the regulatory aspect of public sector/private sector relations. As regulatory activity will not cease, this option would, in the long run, lead to uncontrolled chaos and would induce much dissatisfaction among regulated sectors of industry.

Regulatory processes and techniques are similar across the government. The dispersal of ORR's functions to departments would therefore lead to lack of coordination and duplication.

Retention of the office within the Treasury Board Secretariat (TBS), but with a renewed mandate, is a viable option but desirable only in the short term. Current officials of the office concede that the TBS's principal function is that of dealing with expenditure management; an office dealing with questions of increased efficiency in a particular governmental process belongs elsewhere. There is agreement, nevertheless, that even if the office is maintained as part of the TBS, a redefinition of its mandate is required.

In establishing a new mandate for the group, it should be remembered that regulations do not stand on their own, but are to be read together with the legislation that empowers a body to make them. Their analytical work would therefore be more properly focused on the complete packages which include the statutes and related regulations. The most appropriate function for a revitalized ORR to fulfill would therefore be that of an Office of Legislative Analysis.

The study team recommends to the Task Force that the government consider a combination of redefinition of mandate with transfer to an appropriate location within another branch of the public service.

In this process, the study team suggests the following considerations be taken into account. The closest working relationship of the ORR is with the Privy Council Office section of the Department of Justice, which conducts the legal and grammatical examination of the regulatory texts, the effects of which ORR analyses. It would therefore be most appropriate for the two groups to work together. The establishment of a closer link with the Standing Joint Committee of the Senate and House of Commons on Regulations and Other Statutory Instruments should also be aimed at. Consequently, if, as is proposed in the theme paper on the preparation of legislation, further study concludes that responsibility for all phases of the legislative process be concentrated in a new departmental structure under the leadership of the President of the Privy Council, the Office of Regulatory Reform could be made into an Office of Legislative Analysis and form part of that new department.

FIREARMS REGISTRATION
Royal Canadian Mounted Police

OBJECTIVES

The objectives of the legislation which established the present scheme of gun control were stated as being:

a. the prevention of irresponsible use of firearms;

b. the punishment of criminal use of firearms; and

c. the encouragement and assurance of responsible gun ownership and use.

It must be noted in this context that the firearms registration program under examination is only one aspect of the overall gun control thrust of the government.

AUTHORITY

The Criminal Code, Part II.1, in particular s. 106.6.

DESCRIPTION

Firearms registration is part of the RCMP's Identification Services. As such, it is one of the elements sustaining the core of federal policing.

The RCMP has maintained a centralized firearms registry system since 1951. In 1968, firearms were divided into the administrative classes which still exist today. The other elements of the current system of gun control were established by virtue of amendments to the Criminal Code which came into effect in 1970 and 1979.

Prospective purchasers of any firearm must apply for and obtain from local authorities a firearms acquisition permit. Persons wishing to obtain a weapon classed as restricted must, in addition, apply for a registration certificate to the local authorities. Such certifications may, however, be delivered only by the RCMP. Various other matters dealing with restricted weapons must also be sanctioned by permits. Those wishing to carry on a business related to restricted weapons or firearms must also be holders of a permit to carry on a business.

These declaratory sections of the Criminal Code are backed up by various offences relating to illegal carrying, handling and use of firearms, increased powers of search and seizure for the police and extensions in the applicable law on sentencing and related judicial orders.

The program is founded on a system of intergovernmental cooperation. Locally, police or other public service officials act as Chief Provincial or Territorial Firearms Officers, administering the Code and forwarding documentation to the RCMP. Pursuant to s. 106.3 of the Criminal Code, memoranda of agreement exist between the federal government on one hand and each of the provinces and territories on the other, for the administration of the Firearms Control Program. For each of these, the Solicitor General is the federal contracting party and the RCMP is the agency executing the terms of the agreement.

The core of the federal participation is the twofold task of the RCMP. First, with the registry it maintains pursuant to s. 106.6, it acts as a national coordinator and clearing house of information relating to individual and business dealings in firearms. Second, it is the only authority in Canada enabled to issue registration certificates for restricted weapons. The RCMP's other duties include the preparation of standard forms relating to implementation of the legislation, publication of a National Firearms Manual and preparation of an annual report for Parliament.

In addition to the work assigned by law to the RCMP, the Department of the Solicitor General has a Firearms Policy Centre within its Policy Branch.

The Chief Firearms Officers as well as representatives of several lobby groups constitute a National Firearms Advisory Council whose role is to recommend necessary changes to improve the federal government's firearms program.

Pursuant to s. 106.9 of the Criminal Code, the Solicitor General must lay before Parliament a yearly report relating to the administration of the information contained in the registry.

BENEFICIARIES

The firearms registration program is of greatest benefit to police forces. The Ottawa-based registry is a data bank accessible to these forces and the information contained in it is useful in police investigative work.

The registration program, when considered in the larger context of gun control, is beneficial to the maintenance of public order. The bureaucratic control of firearms often acts as a deterrent to acquisition. Even where it does not, it is one of the elements that has combined to reduce the use of firearms in the commission of offences. While it is probable that a greater number of offences are now committed with other tools, it may also be surmised that firearms registration and gun control have helped reduce the overall commission of offences.

The major item of income is the statutorily fixed fee of $10 payable for firearms acquisition certificates. By virtue of the regulations, there are also fees for business permits. All these are collected and retained by the provinces. The principal expenditures they incur are the administrative costs of the program.

Federal expenditures arise primarily from the amounts paid by Canada to cover the difference between the fees actually collected and the federal-provincial "agreed cost" of each permit application.

Because of the different methods of accounting used by the RCMP and the Treasury Board, it is difficult to estimate the precise cost of firearms registration to the federal government. The following table is as complete as possible.

EXPENDITURES ($000)

	83/84 Actual	**84/85 Actual**	**85/86 Estimate**
Federal deficit	2,180	2,786	2,473
Firearms registration staff of RCMP HQ	585	610	640
Firearms Policy Centre of Solicitor Gen.	---	180	187
PYs			30

Other minor items of expenditure arise for federal authorities in relation to DSS audits of provincial accounts, printing of uniform weapons documentation and storage of permits.

The headquarters staff of the RCMP dealing with firearms registration consists at present of 30 persons. Of these, five are police officers and the remainder are public servants.

At the Secretariat of the Solicitor General, 2.3 person-years can currently be ascribed to firearms policy work.

OBSERVATIONS

The RCMP's firearms registration system seems to be soundly administered. Emphasis is laid on cost-effectiveness and speed of service. Computerization of the stored data is currently taking place.

The federal deficit arising from the payments to the provinces and territories presents the most pressing difficulty associated with the gun control program. The entire range of gun control activities arises from the desire of a portion of the population to use guns. The major financial burden is borne out of the RCMP's budget, which originates in general tax revenues. Putting this program on a cost-recovery basis would therefore seem more equitable.

One of the major questions to consider is the social effect of the legislation. Measurement of the cause-and-effect relationships is difficult but would be necessary to thoroughly analyse the effect of the program.

An even more difficult problem to resolve is the limit of the law's effect. There has been a decrease in the number of crimes committed with registered firearms. However, no statistical separation is available regarding offences committed with unregistered firearms, especially handguns. It is acknowledged that a black market exists in unregistered weapons which are used in the commission of violent crimes. Tightening of the legislation to deal with this area therefore seems appropriate in the view of the study team.

Considering the relatively low cost of firearms registration to the federal government, the fairly smooth operation of the entire program as well as the actual and long-term benefits in terms of social peace, this program is very worthwhile. The study team believes the current gun control system to be the minimum level of control at which freedom to use weapons in Canadian society ought to be maintained. It is also the one likely to be most acceptable from both the political and policy perspectives.

Even if the option of stricter controls is set aside for the moment, several specific issues ought to be addressed. First is the present wording of the Criminal Code. Part II.1 contains several loopholes which are exploited by persons knowledgeable in firearms and confirmed by the courts' strict interpretation of the Code. Most significant among these is the definition of "prohibited weapon" in s.82. As that definition now reads, one of its side effects is that weapons which are manufactured to be "capable of firing bullets in rapid succession" but which, at the time of seizure, have been slightly altered so as temporarily not to be so capable, are exempted from the law.

At present, the Code's system of business permits covers retail operations only. This merits re-examination to determine whether wholesalers should be included. Related to this is the matter of determining what constitutes a business. Many individual owners engage in activities that in any other field would qualify them as operating a business. It may be appropriate to determine how often a person can trade firearms for profit before being considered to be operating a business in the eyes of the law.

Another change to the law that could be examined in a review of the Code is the possibility of revoking firearms acquisition certificates for cause. The elements of the Code dealing with weapons being carried by private security guards should also be looked at in relation to the issuance of certificates and permits to companies and their use by individuals.

The financial aspects of firearms registration similarly bear close scrutiny. Under the present system, the federal treasury suffers a yearly deficit in the operation of this program. There seems no valid policy reason for the general taxpaying population to subsidize a service offered to the specific group of gun purchasers and users. The achievement of cost-recovery therefore is an option for serious examination.

Cost-recovery can be achieved most simply by revising the permit fees. Other methods may be higher import duties on weapons, the imposition of fees for carrying permits or the imposition of fees for transfers of ownership of weapons.

A further area for reassessment is importation of firearms, especially weapons of war. There is evidence of an insufficient level of control over firearms being imported into Canada. Much of this is due, the study team believes, to deficiencies in customs legislation, which allows improperly identified and labelled weapons to be cleared for entry. Another aspect is the relatively loose cooperation between the various police forces and Canada Customs. Officers of this latter organization do not seem to have the expertise to apply the import control aspects of the law properly.

The Department of the Solicitor General has been pursuing policy and legislative amendment proposals through Cabinet. The Law Reform Commission is also examining this subject in the context of its criminal law review.

OPTIONS

The range of policy options relating to the future of the program of firearms registration are:

a. allow unfettered ownership of weapons;

b. maintain the current system of certificates and permits;

c. extend the variety of restricted weapons; or

d. prohibit private ownership of weapons.

While no public service preference was detected, it appears that public opinion is split between the extreme solutions and that the political system favors the status quo.

In light of the foregoing, it appears that the most viable alternative is to maintain the fundamental elements of the existing system, while reexamining several of the specific aspects discussed above.

With respect to the administration of the program, the alternatives are:

a. maintain the existing system operated by the RCMP on the basis of information provided by local and regional police forces;

b. complete federalization;

c. complete provincialization; or

d. privatization.

The present structure relies on the participation of Canada, the provinces and territories as well as on a multitude of police forces. Federalization would result in additional costs arising from the need for more staff. Provincialization would have as its first result the disappearance of uniform application of the law and the consequential decrease in efficiency. The provinces might want to be compensated for the additional duties. Privatization would take enforcement measures relating to substantive criminal law out of the hands of governments.

The study team recommends to the Task Force that the government consider the following:

1. Retain both the firearms registration scheme and the other elements of the gun control program.

2. Establish the goal of full cost-recovery and achieve it by one or several of the most suitable methods available.

3. Study the effects of gun control legislation and determine how it can be enforced more effectively.

4. Revise the relevant sections of the Criminal Code in order to eliminate the textual difficulties and render it more effective.

5. Improve coordination among federal agencies dealing with the subject matter.

INFORMATION COMMISSIONER
Offices of the Information and Privacy Commissioner of Canada

OBJECTIVES

Access to Information is a principle that was made part of the Canadian legal system in 1983. Its purpose is to extend the present laws of Canada to provide a right to access to the information contained in records under the control of government institutions. This legislation was enacted to give effect to the new policy that government information should be available to the public, that necessary exceptions to this right should be limited and specific, and that decisions on the disclosure of government information should be reviewed independently of government. This legislation was intended to complement, and not to replace, existing procedures.

The Office of the Information Commissioner has as its principal function the investigation of complaints from people who believe they have been denied their rights under the provisions of this new law. The Information Commissioner also has the discretion to initiate a complaint regarding access to records under the legislation, where there are reasonable grounds to do so. Moreover, in certain circumstances specified in the legislation, the Information Commissioner may apply to the Federal Court for review of a refusal to access a record.

AUTHORITY

Access to Information Act

DESCRIPTION

The fundamental general rule of law brought into effect by the Access to Information Act is that every person who is a citizen or a permanent resident of Canada has a right to and shall, on request, be given access to any record of listed government institutions. This statute supersedes the previous rules of common law on the question of accessibility. It was also intended to change the practice of public servants in keeping their records confidential. The Act sets out a series of mandatory exemptions and a series of discretionary exemptions from the foregoing rule.

Heads of government institutions are required to refuse access to applicants, where the information requested relates, among other things, to confidences received from a foreign state, a province or a local government; to personal information; to some trade secrets or the financial information of a third party; or, where a prohibition contained in another federal statute forbids disclosure. By contrast, heads of government institutions have the option of refusing access to applicants where the information requested relates, among other things, to federal-provincial relations, the conduct of international affairs or the defence of Canada, lawful investigations or law enforcement, certain trade, financial, scientific secrets or recommendations developed by or for a government institution or a minister of the Crown. In addition to these exemptions, the Act is declared not to apply at all to an entire class of documents categorized as confidences of the Queen's Privy Council for Canada.

An originating request for access is made to the department which the applicant believes has the record in which he or she is interested. The Office of the Information Commissioner intervenes where a complaint is received from an applicant, alleging that access to the records requested, or to a part of them, has been denied. The office may also intervene in relation to various other causes of complaint by applicants. At this stage of proceedings, the intervention of the Information Commissioner takes the form of an investigation. In carrying out these functions, the commissioner has a wide range of quasi-judicial powers.

According to the Act, the Information Commissioner may also initiate a complaint proprio motu. Such a complaint can lead to an investigation of the same nature and be held under the same conditions as if another person had be requested it.

After having conducted an investigation, the commissioner may find that the refusal to grant access was supportable or not supportable in law. These conclusions are set down in a report containing the appropriate findings and recommendations and in some cases a request that notice be given to the commissioner of action to be taken to implement the recommendations. The commissioner's office may also play a role in negotiating a settlement of the application between the parties involved.

If the matter is not resolved to the applicant's satisfaction at this stage, he or she may apply further to the Trial Division of the Federal Court for a review of the decision rendered at the departmental level. If the applicant consents, the request for review can be addressed to the Federal Court by the Information Commissioner. The right of yet further appeals is dealt with in the Federal Court Act and the Supreme Court of Canada Act.

From July 1, 1983, the date on which the Access to Information Act entered into force, until September 30, 1985, 3,681 requests for access were made. Of these, approximately one-tenth reached the stage of complaints requiring investigation. The departments most often targeted with access requests have been National Defence, Employment and Immigration, Health and Welfare, External Affairs and the combination of the Solicitor General, the RCMP and the Canadian Security and Intelligence Service. Approximately one-third of the applications have been submitted by the media, another third by business groups and the last third by a variety of others. It is significant to note that with the accumulation of wider experience under the legal regime established by the Act, access requests have been becoming increasingly complex.

BENEFICIARIES

The Act, as formulated, intends that citizens and residents of Canada be the beneficiaries of the right it provides. The number of actual beneficiaries is of course much more restricted; it includes only these persons who have used the mechanisms set out in the law. According to the commissioner, the potential benefit to be derived from the Act is limited by the very low level of awareness about its existence among the population.

EXPENDITURES

The Office of the Information Commissioner is organizationally and administratively tied to the Office of the Privacy Commissioner. Consequently, the table appearing below shows the expenditures incurred by and the person-years allocated to the combined offices. The same table is therefore also reproduced in the report dealing with the other office. The figures below are quoted from Part III of the 1985/86 Estimates. Readers should note that

1984 was the first complete calendar year and hence 1984/85 was the first fiscal year during which these offices operated.

85/86 Main Estimates ($millions)

	Authorized PYs	Budgetary Operating	Capital	TOTAL	84/85 Main Estimates
Information Commissioner	13	.9	-	.9	.8
Privacy Commissioner	19	1.3	-	1.3	1.2
Administration	21	1.	25	1.	.9
TOTAL	53	3.2	25	3.2	2.9

OBSERVATIONS

The essential characteristic of the Office of the Information Commissioner is its independence from the executive arm of the government. The commissioner is appointed by the Governor-in-Council after approval of the appointment by resolution of the Senate and the House of Commons. The term of office of the commissioner is a renewable seven years. As an independent officer of Parliament, the commissioner reports directly to the Senate and the House of Commons through their speakers. Removal from office may occur only by address of the Senate and House of Commons to the Governor-in-Council.

The Act sets out that the commissioner shall submit an annual report to Parliament and may at any time make a special report to it, referring to and commenting on any matter within the scope of the powers, abilities and functions of the office. Beyond these reports, the Act is to be reviewed on a permanent basis by a committee of the House and Senate designated for that purpose. Most importantly, within three years of the Act coming into force, this Parliamentary Committee is to undertake a comprehensive review of the provisions and operation of the Act. This "three-year review" is to lead to a report to Parliament and is to include a statement of any changes the committee would recommend. The three-year period within which the Parliamentary review is to begin expires on July 1, 1986.

A distinct program entitled "Access to Information and Privacy Publications" of the Treasury Board Secretariat deals with the preparation and distribution of publications required to put the substantive Access and Privacy policies into effect. The "Access Register" and "Index to Personal Information" yearly catalogues, which list the government's information holdings, are the most important products of this program. A separate profile has been prepared on that publications program.

Having regard for the independence of the Information Commissioner from the executive branch of government and keeping in mind the Parliamentary review soon to be held in compliance with s.75 of the Access to Information Act, the study team conducted a summary appraisal of the Office of the Information Commissioner in the course of preparing its interim report but did not study this program further.

PRIVACY COMMISSIONER
Offices of the Information and Privacy Commissioners of Canada

OBJECTIVES

Privacy is a principle which gives individuals the legal right of access to personal information about them held by the federal government. This principle was first introduced into the Canadian legal system in 1978, by way of what was then Part IV of the Canadian Human Rights Act. In 1983, the law on this topic was modernized by the enactment of the Privacy Act and the repeal of earlier legislation. The current Act is the legal and logical counterpart of the Access to Information Act, which brought it into effect. The purpose of the new statute is to extend the present laws of Canada which protect the privacy of individuals with respect to personal information about themselves held by government institutions. Like its predecessor, this law continues to assure individuals the right of access to such information. In addition, the Privacy Act contains a set of principles for fair information practices, by which the government must abide.

The Office of the Privacy Commissioner is the body charged with the administration of the Privacy Act. The principal function of the Privacy Commissioner is to investigate complaints from individuals who believe they have been denied their rights under the law of privacy. The Privacy Commissioner also has the discretion to institute a complaint under the Act, where there are reasonable grounds to do so. Moreover, in certain circumstances specified in the legislation, the Privacy Commissioner may apply to the Federal Court for review of a refusal to disclose personal information.

AUTHORITY

Privacy Act

DESCRIPTION

The fundamental general rule of law brought into effect by the Privacy Act is that every individual who is a citizen or a permanent resident of Canada has a right to and shall, on request, be given access to any personal information about him/herself contained in the personal information banks of listed government institutions. The Act also sets out a series of mandatory and discretionary exemptions from the foregoing rule. This statute supersedes and expands on the privacy protection measures previously contained in the Canadian Human Rights Act.

The heads of government institutions are bound to refuse access to applicants where the information requested relates to personal information obtained in confidence from a foreign state, an international organization, a province or a local government, or where it relates to personal information that was obtained or prepared by the RCMP while performing police services for another level of government. By contrast, the heads of government institutions have the option of refusing access to applicants where the information requested relates, among other things, to federal-provincial relations, the conduct of international affairs or the defence of Canada, lawful investigations or law enforcement, the granting of security clearances, or information the disclosure of which could threaten the safety of individuals. In addition to these exemptions, the Act is declared not to apply at all to an entire class of documents categorized as confidences of the Queen's Privy Council for Canada.

An originating request for access to personal information is made to the department which the applicant believes has the personal information in which he or she is interested. The Office of the Privacy Commissioner intervenes where a complaint is received from an applicant alleging that access to personal information has been refused or that information about the applicant held by a government institution has been used in a way that contravenes the law. The office may also intervene regarding various other complaints. At this stage, the intervention of the Privacy Commissioner takes the form of an investigation. In carrying out these functions, the commissioner has a wide range of quasi-judicial powers.

According to the Act, the Privacy Commissioner may also initiate a complaint _proprio motu_. Such a complaint can lead to an investigation of the same nature and be held under the same conditions as if another person had requested it. The commissioner also has the power to conduct investigations into personal information banks, independently of any complaint.

After having conducted an investigation, the commissioner may find that the complaint is or is not well founded in law. These conclusions are set down in a report containing the appropriate findings, recommendations and in some cases a request that notice be given to the commissioner of action to be taken to implement the recommendations. The commissioner's office may also play a role in negotiating a settlement of the application between the parties involved.

If the matter is not resolved to the applicant's satisfaction at this stage, he or she may apply further to the Trial Division of the Federal Court for a review of the decision rendered at the departmental level. If the applicant consents, the request for review can be addressed to the Federal Court by the Privacy Commissioner. The right of yet further appeals is dealt with in the Federal Court Act and the Supreme Court of Canada Act.

From July 1, 1983, the date on which the present Privacy Act entered into force, until December 31, 1984, 36,391 requests for access to personal information were made. Of these, a limited number reached the stage of complaints requiring investigation. The departments most often targeted with requests for access to personal information have been Employment and Immigration, the RCMP, the Canadian Security and Intelligence Service, National Defence, the Public Archives, Revenue Canada and the Correctional Service.

BENEFICIARIES

The Act, as formulated, intends that citizens and residents of Canada be the beneficiaries of the right it provides. The number of actual beneficiaries is of course much more restricted; it includes only those persons who have used the mechanisms set out in the law. According to the commissioner, interest in the use of the privacy legislation has constantly been on the increase, even though no governmental effort has been undertaken to make the Act more widely known.

EXPENDITURES

The Office of the Privacy Commissioner is organizationally and administratively tied to the Office of the Information Commissioner. Consequently, the table appearing below shows the expenditures incurred by and the person-years allocated to the combined offices. The same table is therefore also reproduced in the report dealing with the other office. The figures below are quoted from Part III of the 1985/86 Estimates. Readers should note that 1984 was the first complete calendar year and hence 1984/85 was the first fiscal year during which these offices operated.

85/86 Main Estimates ($millions)

	Authorized PYs	Budgetary Operating	Capital	Total	1984/85 Main Estimates
Information Commissioner	13	.9	-	.9	8
Privacy Commissioner	19	1.3	-	1.3	1.2
Administration	21	1.	25	1.	.9
TOTAL	53	3.2	25	3.	2.9

OBSERVATIONS

The most essential characteristic of the Office of the Privacy Commissioner is its independence from the executive arm of the government. The commissioner is appointed by the Governor-in-Council after approval of the appointment by resolution of the Senate and the House of Commons. The term of office of the commissioner is a renewable seven years. As an independent officer of Parliament, the Commissioner reports directly to the Senate and the House of Commons through their speakers. Removal from office may occur only by address of the Senate and House of Commons to the Governor-in-Council.

The Act sets out that the commissioner shall submit an annual report to Parliament and may at any time make a special report to it, referring to and commenting on any matter within the scope of the powers, abilities and functions of the office. Moreover, the commissioner shall, upon a request by the Minister of Justice, carry out special studies relating to the privacy of individuals and the collection of personal information.

Beyond these reports and studies, the Act is to be reviewed on a permanent basis by a committee of the House and Senate designated for that purpose. Most importantly, within three years of the Act coming into force, this

Parliamentary committee is to undertake a comprehensive review of the provisions and operation of the Act. This "three-year review" is to lead to a report to Parliament and is to include a statement of any changes the committee would recommend. The three-year period within which the Parliamentary review is to begin expires on July 1, 1986.

A distinct program entitled "Access to Information and Privacy Publications", conducted by the Treasury Board Secretariat, deals with the preparation and distribution of publications required to put the substantive access and privacy policies into effect. The "Access Register" and the "Index to Personal Information" yearly catalogues, which list the government's information holdings, are the most important products of this program. A separate profile has been prepared on that publications program.

Having regard for the independence of the Privacy Commissioner from the executive branch of government and keeping in mind the Parliamentary review soon to be held in compliance with s.75 of the Privacy Act, the study team conducted a summary appraisal of the Office of the Privacy Commissioner in the course of preparing its interim report but did not study this program further.

ELECTIONS CANADA

OBJECTIVES

The Chief Electoral Officer has a mandate which includes the following principal duties:

a. the administrative conduct of federal elections;

b. the calculation of the number of federal electoral districts assigned to each province and the coordination of the work of provincial and territorial electoral boundaries commissions;

c. the registration of political parties;

d. the enforcement of legislation relating to electoral expenses; and

e. the enforcement of legislation relating to political broadcasts.

AUTHORITY

The Constitution Act, 1867, s. 51
The Canada Elections Act
The Electoral Boundaries Readjustment Act

DESCRIPTION

The most important and hence the most visible aspect of the work of the Office of the Chief Electoral Officer is that which encompasses the entire range of administrative activities related to elections.

In the periods leading up to the holding of elections, the Chief Electoral Officer (CEO) selects and appoints returning officers and trains these officers, their deputies as well as poll clerks for each of the electoral districts. He also provides all necessary supplies to the officials in each riding. In particular, he distributes ballot boxes and assures the printing and distribution of ballot papers.

The CEO has several duties relating to the preparation of elections. First, he arranges the division of electoral districts into polling divisions. Then he organizes and supervises the preparation of lists of electors through the enumeration process. He also prepares the official lists of candidates resulting from the system of nominations. Still prior to the date determined for the holding of the poll, the CEO organizes the advance polls and supervises the early voting procedure.

With respect to the actual conduct of elections, the role of the CEO is vital in all non-political respects. The CEO organizes the proceeding of work at the polls and establishes the manner of voting and, assures the orderly counting of votes and the reporting of results. The CEO also makes official declarations as to which candidates have won at the polls and compiles election returns. After elections are over, the CEO maintains the official list of elected candidates and retains custody of election documents.

The Chief Electoral Officer fulfills the same functions for federal by-elections. Moreover, he may enter into agreements to organize the conduct of elections for the councils of the Yukon and Northwest Territories.

In relation to each general election conducted and to each year in which the office operated, the CEO must provide a report to Parliament. The Chief Electoral Officer sometimes uses these reports to bring forward recommendations for the revision and modernization of electoral legislation.

The volume of work decreases significantly between elections. This reality is reflected in the Act by the presence of provisions enabling the CEO to hire either permanent or temporary and casual staff. This flexibility in employment practice is significantly different from the rules applicable to most departments.

Whether between elections or at election time, the office of the CEO relies in large part on the services that various departments can provide. In this context the most prominent examples of interdepartmental cooperation are that maps are prepared for the CEO by Energy, Mines and Resources; records retention is done by the Public Archives; audit services are furnished by Supply and Services; and premises are made ready by Public Works.

The CEO's legal advice is provided by a lawyer whose status is that of a public servant, but who is not an employee of the Department of Justice. The reason for this is to avoid any conflict of interest for the legal adviser, considering that the Minister of Justice is also a member of the House of Commons, elected pursuant to the process administered by the CEO.

BENEFICIARIES

The conduct of fundamentally fair, independently administered and efficiently organized elections is of benefit to all Canadians and to the democratic political system of the country as a whole. While this has always been true, it is even more apparent since the adoption of the Charter, which in section 3 contains a declaration guaranteeing to citizens of Canada the right to vote in an election of members of the House.

EXPENDITURES

The major part of the CEO's expenditures are statutory. Into this category fall all the major activities of the office related to its statutory responsibilities, the preparation and conduct of elections as well as the readjustment of electoral boundaries.

The non-statutory budget includes salary expenditures for the CEO's nucleus group as well as for the financial and material resources needed to support these personnel.

The Treasury Board's expenditure figures are as follows:

Resources ($millions)

	83/84 Expenditures	**84/85 Main Estimates**
Non-Statutory Budget		
Salaries and Wages	1.7	1.9
Other O&M	.2	.2
Grants & Contributions	-	-
Capital		
TOTAL	1.9	2.1
Revenue	-	-

OBSERVATIONS

The most significant observation to be made about the office of the CEO is that it is independent from the executive branch of government. In sum, it is a creature of Parliament; it serves the legislature and is accountable only to it. In practical terms, this independence and neutrality find expression in the method of appointment of the CEO, which is by resolution of Parliament. During his/her occupancy of the function, the CEO communicates with the Governor-in-Council through the President of the Privy Council but takes no direction from any member of the government. The CEO can be removed from office only by the Governor General, on address of the Senate and House of Commons.

OPTIONS

Having regard for the independence of the Office of the Chief Electoral Officer from the executive branch of the government and keeping in mind the politically sensitive nature of the tasks the CEO fulfills, the study team conducted a summary appraisal of this office in the course of preparing its interim report but did not study this program further.

INTERNATIONAL JOINT COMMISSION

OBJECTIVES

The principal functions of the International Joint Commission (IJC) are to:

a. approve certain uses of and works in waters of the Canada-United States boundary and in rivers flowing across the border;

b. deal with questions involving rights along the frontier which are referred to it for examination and report;

c. decide matters of difference between the two countries, with the consent of both parties; and

d. fulfill limited administrative and regulatory functions relating to the level of the Lake of the Woods.

AUTHORITY

Boundary Waters Treaty, 1909 and the implementing International Boundary Waters Treaty Act; Treaty and Protocol between Canada and the United States to regulate the level of the Lake of the Woods, 1925; and Great Lakes Water Quality Agreement, 1978

DESCRIPTION

The International Joint Commission is a permanent, unitary body established by treaty between Great Britain and the United States, to which Canada has succeeded. The IJC is an international organization whose status has been recognized by Canada in the form of an order made pursuant to the Privileges and Immunities (International Organizations) Act. It has two headquarters, in Ottawa and Washington, as well as a regional office in Windsor, Ontario.

The IJC is composed of six commissioners, of whom three are Canadian. These Canadian commissioners are Order-in-

Council appointees, named on the recommendation of the Secretary of State for External Affairs. The Chairman of the Canadian section has the rank of a deputy minister and is assisted by the commission staff, consisting of a secretary, a legal adviser, scientists, engineers and support personnel. These officials act not as a national delegation representing the government of Canada, but rather as members of a single body seeking common solutions.

The IJC's current operations can be divided into three broad categories. The first is its exercise, by virtue of the Boundary Waters Treaty, of quasi-judicial powers in approving or withholding approval of applications for the use, obstruction or diversion of boundary waters on either side of the border that would affect the natural level or flow on the other side. This responsibility extends to the approval of works in water flowing from the boundary waters and in waters that have crossed the boundary, when such works would affect the natural water level on the other side of the boundary.

The IJC also carries out examinations of specific problems when requested by either or both governments and reports on them. Implementation of the commission's recommendations made under such a reference is at the discretion of the two governments and is not mandatory.

The IJC was assigned additional functions by the 1978 Great Lakes Water Quality Agreement. This agreement addresses all aspects of the Great Lakes Basin ecosystem, including pollution from water, land and atmospheric deposition. It constitutes a reference to the commission, pursuant to the 1909 Boundary Waters Treaty, to analyse information on water quality and the effectiveness of government pollution control programs and to advise governments on Great Lakes water quality problems. This reference is symptomatic of the fact that in recent years the commission's focus of attention and its principal efforts have been devoted to responding to references concerning environmental matters.

In carrying out its mandate, the IJC does not rely exclusively on its own staff. In fact, an indispensable part of the institutional structure set up to implement the 1909 treaty consists of the expert boards the commission has established to assist it in performing its functions. These control, investigative and advisory boards, of which there are now more than 20, are composed mainly of Canadian and U.S. public servants, made available without cost to the commission. The boards bring technical expertise to the work of the commission in addition to that available among its own officials.

BENEFICIARIES

The Boundary Waters Treaty was designed to help prevent and settle disputes regarding the use of boundary waters. The commission's work, being quasi-judicial, often obviates the need for strictly political resolution of complex technical problems. In this context, the IJC contributes to the "undefended" status of the world's longest undefended border. Beneficiaries in the direct sense are those who reside or earn their living along boundary waters or along rivers flowing across the border. From another perspective, the Government of Canada and the United States benefit from the IJC's work.

EXPENDITURES

The IJC's budget for 1984/85 was $3.36 million. For 1985/86 estimated expenditures are $3.45 million. These funds are provided through the External Affairs envelope, within which the Treasury Board deals with the IJC as a separate institution.

The commission's Canadian personnel consists of 47 person-years. Of these, three are commissioners. There are nine officers and 12 support staff in Ottawa and another 10 officers and 13 support staff in Windsor. The Treasury Board has ordered that this complement be reduced by two person-years.

OBSERVATIONS

Because of its international nature and function, the Canadian section of the International Joint Commission is a very particular element of the public administration of Canada. Its principal characteristic is its independence from individual ministers or departments in the executive branch of government. It is responsible to the government as a whole, however, through its constitutional accountability to Parliament.

The manifestations of this independence are very apparent. IJC commissioners take no oath of allegiance to Canada, but do take one to the treaty which established the commission. The IJC does not fall within the ambit of the Financial Administration Act and is not listed in the schedules of the Access to Information and Privacy acts. It would appear, therefore, that *de jure*, the IJC is a *sui generis* organization.

This juridical independence contrasts sharply with the *de facto* interdependence existing between the IJC and several departments. The Public Service Commission organizes the staffing of IJC positions. The departments of Environment and Transport provide members for many of the IJC's boards. Other assistance is received from Public Works and Supply and Services. Finally, because of the nature of the IJC's work, there is much interaction between it and the Department of External Affairs. These interdepartmental arrangements are very flexible and seem to function well for the benefit of all parties.

There is no apparent overlap or duplication between the work of the International Joint Commission and that of any other agency of the Government of Canada.

OPTIONS

Having regard for the independence of the International Joint Commission from the executive branch of government and keeping in mind its status as an international, rather than a purely Canadian organization, the study team conducted a summary appraisal of the IJC in the course of preparing its interim report but did not study this program further.

POLITICAL CONTRIBUTION TAX CREDIT

OBJECTIVES

The purpose of including the political contribution tax credit in Canada's income tax legislation was to engender the interest of a greater number of people in the federal political process and to encourage them to participate in it. The fostering of a broad base of small contributors providing funds on a formalized basis is also designed to limit the opportunity and need for large, anonymous contributions to political parties and candidates.

AUTHORITY

The Income Tax Act, in particular sections 18(1)(n), 127(3)(4)(4.1) and 230.1.
The Income Tax Regulations, in particular Part XX.

DESCRIPTION

The present scheme of political contribution tax credits was brought into effect on August 1, 1974. The policy underlying this part of the Income Tax Act was elaborated by the Department of Finance. Ongoing administration is carried out by the Legislation Branch of Revenue Canada-Taxation.

In any taxation year, taxpayers may deduct from tax otherwise payable under Part I of the Act contributions to a registered party or official candidate in a federal election or by-election. The deduction is calculated as a percentage of the actual contribution made, according to the following scale:

75 per cent of the first $100 contributed;
50 per cent of the next $450; and
33.3 per cent of the next $600.

The maximum allowable deduction is $500 and is available where the taxpayer has contributed $1,150. For these purposes, party membership fees are allowed as deductions.

In the calculations relating to income taxation, this item is a tax credit rather than a deduction from income. The purpose of this arrangement is that the deduction be neutral for high- and low-income earners. Moreover, it is applied only against federal tax. The determination of the deduction is therefore made by first calculating income according to the general rules, then taxable income, then federal tax and provincial tax separately, and finally by applying the deduction against the federal tax otherwise payable.

The political contribution tax credit is administered on the basis of a system of receipts and reports. When a person makes a contribution, the official agent of the candidate or the registered agent of the party to which the contribution was made may issue official receipts to that person. Records of contributions received and receipts issued must be kept by these agents. Copies of the receipts must be forwarded to Revenue Canada-Taxation and reports on contributions received must be sent to the Chief Electoral Officer of Canada. After each election, political parties are required to make annual reports and candidates for political office must report on the receipts issued.

The application of this reporting scheme to candidates is limited in time. Receipts for contributions made to them may be issued only starting on the day the candidate is nominated and ending on the polling day. No such restriction in time is applicable to parties.

BENEFICIARIES

The principal benefit of the political contribution tax credit is in the increased transparency and hence democratization of the electoral system. According to the original purpose and the actual operation of this tax credit, not only does it provide a financial inducement for participation in the political process, but it also ensures that participation is made in a standardized and formal manner. This is achieved by declaring political contributions to the state through income tax returns while protecting the contributor's confidentiality from third parties who do not have access to those returns. The taxpayer's contribution is made known to state authorities but his or her privacy is maintained pursuant to section 241 of the Income Tax Act.

From a more immediate perspective, political parties and their candidates derive benefit from the presumably greater number of contributions to their coffers.

EXPENDITURES

The expenditures related to this program are to be seen primarily in the form of tax revenue foregone by the treasury. The determination of that cost varies according to the monetary value of the individual contributions made and by virtue of the level of political interest in any year. By this standard, the program is most expensive and therefore detrimental to federal income in years when general elections are held, because it is in those years that interest in political participation is most acute.

Statistical and Financial Breakdown(1)
Political Contribution Tax Credit

($000)	1982	1983	1984
Number of claimants	95,000(2)	104,599(2)	174,742(3) (contributions to parties and candidates)
Contributions to parties	21,623	27,282	38,644
Receipts issued by parties	-	27,074	37,218
Contributions to candidates for an election	-	-	24,327
Amount of political contribution tax credit claimed	Approx. 6,000	8,237	13,001

(1) This table is a composite of information gathered from Revenue Canada - Taxation, Finance and the Chief Electoral Officer. There is no uniformity in the figures kept by these departments.

(2) Contributions to parties only.

(3) Contributions to parties and candidates.

It is expected that in 1985 the number of contributions will decrease. Consequently, the tax loss will also be lighter.

Ongoing administration of the program requires one person-year at Revenue Canada-Taxation, costing approximately $30,000 per year. The department also incurs expenses related to occasional audits. The Election Financing Branch of the Office of the Chief Electoral Officer is also involved in operating this tax credit scheme.

OBSERVATIONS

The political contributions tax credit is new law in the sense that this topic was not dealt with by the Income Tax Act prior to 1974. Comparison of current levels of contribution with pre-1974 levels are thus impossible. It is to be surmised that the availability of the credit has induced greater participation. Since the introduction of this measure, the number of contributions has certainly risen and, in that sense, the original goal of the legislation has been met.

The federal scheme has also served as a model for other Canadian jurisdictions. Parallel legislation has been introduced everywhere except Saskatchewan, Prince Edward Island, Newfoundland and the Northwest Territories.

For a full understanding of the subject matter, the political contribution tax credit must be considered together with the legal provisions dealing with electoral expenses. The legislation regarding these topics in essence regulates a single continuous flow of funds into and out of political organizations, whether on the local or national scale. The amendments to the Income Tax Act and the Canada Elections Act which established the rules on the funding of and spending by parties and candidates were introduced not only to encourage participation but also to publicize the financing of electoral campaigns and eradicate the practice of secret funding of parties and candidates. While large donations may still be made, the political contribution tax credit provides a disincentive since parties' and candidates' agents will issue official receipts for no more than the maximum of $1,150 from which allowable deductions may be made.

ASSESSMENT

On the whole, the study team believes the political contribution tax credit has worked well in the direction desired by its framers. One significant administrative difficulty, however, is apparent, . Agents of political parties and candidates must report on the contributions received to both Revenue Canada-Taxation and the Chief Electoral Officer. Despite the fact that the information needed by these agencies to regulate the political contribution tax credit is the same, their respective statutes are so worded that the substance as well as the form of the reports are different. This represents not only duplication, but also administrative inefficiency, because the statistics finally produced by the two departments do not match.

Policy amendments to the existing scheme could either make the contributions deductable from income rather than income tax payable, or repeal the tax credit altogether. Neither seems desirable.

OPTIONS

The study team recommends to the Task Force that the government consider having only one agency receive, record, file, act on and publish statistics arising out of the political contribution tax credit. Considering that this is a matter relating to the electoral system, the Chief Electoral Officer is best suited to this function. Concurrently, it is important to maintain the principle of accessibility to both the raw data and to the tabulated figures by Revenue Canada-Taxation. To achieve this, simultaneous amendments to bring the reporting requirements contained in the Income Tax Act and the Canada Elections Act into line with each other seem necessary. In enacting these amendments, care must be taken to continue to protect the privacy of contributors.

This program provides a potential benefit available to all the people of Canada who want to exert an influence on the electoral process by financial means and an actual benefit to those who avail themselves of the opportunity. The scheme in place seems to have wide political acceptance. It is as neutral as possible in the existing regime of taxation and is relatively inexpensive to the treasury. This option would bring no change to its fundamental elements, while correcting the administrative difficulties inherent in the system of reporting to two government departments.

ACCESS TO INFORMATION AND PRIVACY PUBLICATIONS
Treasury Board Secretariat

OBJECTIVES

Both the Access to Information Act and the Privacy Act require the publication and distribution of inventories showing the information holdings of government. In accordance with those statutory obligations, the purpose of this program is to provide the general public with the means to avail themselves of their rights provided by the two Acts.

AUTHORITY

Access to Information Act
Privacy Act

DESCRIPTION

The Access to Information and Privacy (ATIP) Publications Program consists of the preparation, production, printing and distribution of a variety of publications designed to enable the public to use the ATIP Acts. The most important of these publications are the "Access Register" and the "Index of Personal Information". In addition, program officers prepare the forms required for the administration of ATIP procedures, gather quarterly statistical reports on the operation of the Acts and publish explanatory pamphlets and posters regarding the legislation.

The Access Register brings together, for the first time in a single publication, a detailed listing of the information holdings attached to each government program and provides a description of the contents of each such information bank. According to a Treasury Board submission made in September 1985 to the House of Commons Standing Committee on Justice and Legal Affairs, the register represents a major effort on the part of government to facilitate the identification of records sought by applicants for access to information.

The Index of Personal Information is a publication which parallels the Access Register and which describes the personal information holdings of government institutions. It also outlines the practices these institutions apply to such information to meet the requirements of the Privacy Act regarding collection, retention and disposal of personal information, as well as its use and disclosure.

Both the Register and the Index are the result of several years of preparation by all government institutions which come within the ambit of the ATIP Acts. This preparation was coordinated by a transition team based in the Treasury Board Secretariat. Since 1983/84, the two publications have appeared annually. Their circulation at the most recent count is 8,340. Of this number, 2,657 are distributed to public libraries across Canada; 2,000 are for sale by the Department of Supply and Services; 700 are used in Parliament; 561 are distributed to post offices; and 373 are sent to institutions of higher learning.

In addition to the publications, a very important product of the program is the group of Treasury Board Directives which sets out administrative practices and procedures relating to the handling of ATIP applications.

BENEFICIARIES

Beneficiaries of this program are those to whom the ATIP Acts apply, i.e. citizens of Canada or permanent residents within the meaning of the Immigration Act, 1976.

EXPENDITURES ($000)

	83/84	**84/85**
Salaries	409	566
O&M	610	941
TOTAL	1,019	1,507
PYs	8	10

To deal with ATIP publications, the Treasury Board Secretariat uses fairly limited internal manpower. At the peak times of each year, however, when the Register and Index are collated and made ready for distribution, the board hires up to 30 temporary employees.

OBSERVATIONS

Administration of the subject matter of ATIP through a cluster of programs, including this one, is split among a variety of government institutions. The principals are the Access and Privacy Commissioners who establish the major policies in their respective fields and who can represent applicants or act with them in litigation against the Crown. These commissioners are appointed by Parliament and are responsible to it. For purposes of administration of the laws, the Minister of Justice and the President of the Treasury Board are "designated Ministers", each dealing with different aspects of the two Acts. The former functions essentially as the Crown's own legal adviser and attorney in case of litigation. The latter deals with administrative matters and related central services that arise in the execution of the government's ATIP functions. Moreover, there is an ATIP coordinator in each department and agency to which these Acts apply. They see to the detailed execution of the government's duties under the Acts. There is also some peripheral involvement in ATIP by Statistics Canada and the Public Archives.

In the multiplicity of involvements by government agencies in ATIP, the presence of the Treasury Board Secretariat is based on the role assigned to that body by the Financial Administration Act, as the department responsible for administrative policies on a government-wide basis.

The deployment of personnel engaged in the ATIP publications program is sound. Most of the permanent staff involved deal with this topic as only part of the set of tasks assigned to them. The overload of work is performed once a year by temporary personnel.

Printing of the Register, the Index and the related publications is performed by private companies on a contractual basis. Performance in this area appears satisfactory both to the board and the commissioners.

Some thought has been given to computerization of the major publications and their accessibility through electronic means. It is feared, however, that the costs would be prohibitive, in light of the limited use that could then be made of the Register and the Index. For remote areas of the country, without the required equipment, hard copies would continue to have to be produced. Moreover, the costs would be compounded by annual revisions and additions to the texts.

ASSESSMENT

In the view of the study team, the principal question is whether the information contained in the Register and the Index is the right information to enable prospective applicants to benefit from the rights assured to them in the acts. The content of the Register and the Index is determined by the two acts. There is thus no leeway, short of amending the legislation, to alter the information. The quality of the information, however, varies, department-by-department. While the Treasury Board Secretariat requests departments to come forward with listings of their data banks and coordinates and collates the information provided, individual departments prepare their own submissions. The accuracy and reliability of these submissions has varied greatly. There is, nevertheless, an offsetting benefit, in that a partial correlation can be established between departments providing the best reports and those to which most access and privacy requests are addressed.

One must also question if whether the information provided is properly presented. The major problem with the ATIP publications program as it is now organized is the format in which the information is presented. While the two Acts contain the substantive requirement that the Register and the Index be published, they do not mention form. The volumes now put out by Treasury Board are enormous and unwieldy. The presentation of the information is far too complicated and obscure. Both the size and the internal arrangement of these books are therefore thought to act as deterrents to the greater use of the rights provided by the legislation.

At present, in order to attempt access to a specific item of information, an applicant must know in which information bank it is contained, and which government department holds that bank. Many applicants do not have that knowledge. Requests for access are thus often shunted from one branch of government to the other until, by accident, the right source is discovered. This is obviously not in line with the legislator's intention.

Prospective users of the Access and Privacy schemes could have their rights facilitated by restructuring the format of the Register and the Index. The most suitable way of accomplishing this goal would be to combine these publications listing information banks with others which catalogue federal government institutions and enumerate federal government programs and services, and then cross-reference these publications. The "Access Register" and "Index to Personal Information", used in conjunction with, and cross-referenced to, "The Organization of the Government of Canada" also published by the Treasury Board, and the DSS "Index of Government Programs and Services", would provide a complete package indicating what the government consists of, what it does and what information it accumulates. In the view of the study team such a combination of diverse publications would not only assist applicants under the two Acts in question, but would have a cumulative impact in enabling citizens to interact with their government more effectively.

OPTIONS

The study team recommends to the Task Force that the government consider the following:

The first alternatives to be examined is whether or not this program should be continued. Considering that the publications prepared pursuant to it are required by law, discontinuation is not an option. As long as the Acts remain in force, the Treasury Board Directives designed to give effect to them are also required.

It must be determined whether the access and privacy publications are to be left in their present state or altered. In considering this, the guiding criterion ought to be the spirit of the legislation. Both these Acts provide clear evidence of Parliament's intent to give new rights to the designated beneficiaries. It would therefore appear equitable that the new rights be accompanied by auxiliary programs enabling the beneficiaries to use these rights. Rendering the ATIP publications manageable and useful by having them coordinated with and cross-referenced to the related publications entitled "The Organization of the Government of Canada" and the "Index of Government Programs and Services" seems the most appropriate option to adopt.

The publication of these books is an operation only ancillary to the exercise of the substantive rights granted by the ATIP legislation. The privatization of this entire program may therefore be an option to consider, as long as adequate government control of the final product is maintained.

By July 1, 1986, when the ATIP Act will have been in force for three years, Parliament will be required to undertake a review of this area of law. It is presumed that flaws in the existing legislation will be corrected. The framework within which ATIP publications will be needed may be altered in the course of that Parliamentary review. The most suitable course of action at present would therefore be:

a. to suspend execution of the Task Force's recommendations with regard to this program until the Parliamentary review has been undertaken;

b. to inform the Access Commissioner, the Privacy Commissioner and the Chairman of the Parliamentary Committee conducting the review of the terms of the Task Force's proposals; and

c. to coordinate execution of the Task Force's proposals with those of the Parliamentary Committee.

CORRECTIONS

OVERVIEW

The Correctional Service of Canada (CSC) is a federal agency which runs federal penitentiaries and the post-release supervision of federal offenders in the community. However, for the sake of clarity, issues specific to post-release supervision will be dealt with later under "Parole".

Concern about corrections involves several main issues, along with numerous smaller ones. The main issues could be characterized as follows: confusion about the objectives and mandate of corrections; the friction created by the federal/provincial split in jurisdiction in corrections; concern over the growth in costs and use of incarceration, along with concern about its effectiveness; and concern about potentially violent offenders' release from imprisonment.

The debate over the objectives of corrections has raged for decades and is likely never to be resolved, principally because corrections is asked, and likely always will be asked, to serve multiple and even conflicting aims which are inherent in sentencing and other factors. A sentence may be aimed at punishment, restitution or reparation, rehabilitation, deterrence of the general population, or incapacitation of those who are a continuing threat, or any combination of these. Even when a sentence is directed towards only one aim, it will often embody others as well, as in a sentence of imprisonment, which invariably has a painful or punitive aspect.

Although it is sometimes suggested that penitentiaries should cease trying to fulfill aims beyond punishment and incapacitation, the study team has concluded that the other efforts which go on inside the penitentiary (although some could be done more effectively and efficiently) are justified, and their abandonment would be irresponsible on government's part.

People who end up in prison present a multiplicity problems: 40 per cent are functionally illiterate; at least as many have a drug or alcohol dependency; and most have few marketable skills and a history of sporadic employment; many have learning disabilities, poor social skills, family problems, and low maturation. A few have severe mental disorders but cannot be accommodated by the mental health system. Far from concluding that the effort to deal with these problems is a "frill" which cannot be justified in an era of restraint, the study team finds that discouragingly little is being done about these problems.

Instead, the use of incarceration is growing -- with attendant cost-increases -- while the development of meaningful programs both inside and outside prison changes very little. It now costs almost $200,000 to construct a single prison cell, and the annual operating and maintenance costs of prisons are staggering. Canada has, moreover, one of the highest incarceration rates in the western industrialized world. Our over-reliance on incarceration is a luxury which is quickly becoming difficult to afford. The study team has suggested some strategies for review by the Canadian Sentencing Commission, has developed proposals intended to cap the available prison bed-space (an action which may be suggested anyway by the aging of the baby-boom population) and has suggested the development of meaningful community-based programs which will provide a real alternative to imprisonment. In this effort, the federal government would be joined not only by the provinces (which administer community-based sentences) but also the private sector, which holds the best hope for creating the many diverse and specialized programs which are needed.

The federal-provincial split in jurisdiction in corrections has existed since 1842, and is both an "historical accident" and entirely arbitrary. In essence, the federal government imprisons and supervises after release all persons serving two years or more, and the provinces are responsible for community-based sentences and prison terms of up to two years less a day. This arbitrary split causes administrative duplication and overlap between the two levels of government. Perhaps more important, however, it causes inefficient and ineffective use of all resources by both levels of government, which wind up competing for staff, community services and private sector resources, as well as placing often conflicting demands on related social services (such as education, health care and housing) which are delivered mostly at the provincial level. The study team proposes that interested provinces or groups of provinces be allowed to assume full responsibility for all corrections within their borders, through the most appropriate mechanism (constitutional reform or delegation). Certain basic standards of human rights, programs and dates-of-release eligibility would be assured through the federal criminal law power and through monitoring the spending of funds which would be transferred from the federal government.

An option which received less support was for the two levels of government to engage in greater exchange of services but retain the federal "presence" in running the penitentiaries. This sort of exchange of services is currently being pursued, as in the possible amalgamation of all community supervision services within one province.

Remission of sentence has become an issue -- in the federal system at least. It provides that an inmate who has been of good behaviour can earn a reduction of up to one-third of his/her sentence. Remission is intended as an institutional control tool and, for the most part, both federal and provincial correctional administrators support its continuation. To eliminate it altogether would increase the federal penitentiary population by an estimated 23 per cent. However, the public is justifiably concerned about the "automatic" release on remission of potentially violent offenders, and the study team concludes there should be provision to detain those relatively few demonstrably dangerous offenders in penitentiary until warrant expiry, regardless of any remission they may have earned. This proposal is in fact the subject of Bill C-67, currently in committee.

Finally, the study team made a number of proposals designed to reduce various inefficiencies in penitentiaries, all of which are under active consideration by CSC. The study team found the CSC to be an over-administered agency. Twelve per cent of its person-years are at national and regional headquarters rather than in the field. CSC should also begin using part-time employees in order to achieve savings in the large annual overtime budget. Some savings may also be achieved by combining certain functions currently carried out by staff on separate duty rosters and eliminating duplication and overlap between CSC and the National Parole Board, such as in "quality control" of the work of parole officers and in data collection and system maintenance.

The study team also identified numerous areas which seem suitable for further privatization, including community supervision, halfway houses, specialized treatment programs, and various administrative services.

CORRECTIONAL INVESTIGATOR

OBJECTIVES

The Correctional Investigator is an ombudsman for federal inmates who, acting on his/her own initiative or on a complaint from an inmate, may investigate and report upon the problems of federal inmates which come within the responsibility of the Solicitor General (i.e. excluding complaints about parole decisions).

AUTHORITY

By Order-in-Council under the Inquiries Act, Part II.

EXPENDITURES ($000)

	83/84 Expenditures	84/85 Main Estimates
Salaries and Wages	228.1	376.0
Other O&M	108.1	73.0
Grants & Contributions	-	-
Capital	-	-
TOTAL	336.2	449.0
Revenues	-	-
PYs	8	10

DESCRIPTION

The office of the Correctional Investigator was created in 1973 as a result of criticism of penitentiary practices, and most particularly in response to the Swackhamer Report recommendation for an independent body to review inmates' complaints. The number of complaints investigated has increased steadily from 782 in 1973/74 to some 1,300 to 1,700 in recent years.

The officers of the Correctional Investigator all work out of Ottawa and travel to the penitentiaries for the purpose of interviewing staff and inmates. Approximately $43,000 was spent on travel in 1983/84.

From time to time, the Correctional Investigator has been asked by the Solicitor General to conduct an inquiry into a matter of special concern. As an example, the

Correctional Investigator did an extensive investigation of the aftermath of the Archambault riot of 1982.

OBSERVATIONS

All of the provinces except Prince Edward Island, as well as many foreign jurisdictions (such as Australia, New Zealand, and Western Europe) have an ombudsman's office. Not surprisingly, jurisdictions have found that inmate complaints constitute a substantial percentage of the complaints received. In 1983/84, for example, 30 per cent of all complaints received in Ontario were from inmates.

From time to time, critics and persons holding the office of the Correctional Investigator have recommended that more be done to preserve its appearance of independence from government, such as through reporting directly to Parliament and being appointed for a term of years, rather than "at pleasure". Cabinet considered and approved proposals by the Solicitor General in 1985 to achieve this greater independence through the specific creation of the office in statute, the articulation in statute of the powers of the office, the creation of a five-year renewable term, and the duty to report annually to the Solicitor General who must table the report as submitted to Parliament. A draft bill reflecting these decisions has not yet been tabled in Parliament.

The Correctional Investigator may (and usually does) refuse to investigate a complaint until the inmate has "taken all reasonable steps to exhaust available legal or administrative remedies". For federal inmates, these remedies may include the CSC's internal Inmate Grievance Procedure, "privileged correspondence" to such persons as the Solicitor General or other MPs, and redress through the courts. Because of the limited availability of the latter two remedies, the Correctional Investigator typically awaits only the outcome of the inmate grievance procedure before acting. The inmate grievance procedure permits inmates to submit written complaints through various initial and appeal levels, beginning with the division head of the penitentiary unit involved and ending with the commissioner.

A similar inmate grievance procedure was originally proposed by the 1977 Parliamentary Sub-Committee on the Penitentiary System, but certain key elements in the sub-committee's model were altered before it was implemented across CSC. Briefly, the sub-committee's model is based on mediation. An inmate grievance coordinator helps inmates articulate their grievances in writing and ensures that time limits are met at all levels. He/she first tries to mediate an informal solution between the inmate and the party being complained about but, if mediation fails, the grievance is referred to a staff-inmate grievance committee, which in most jurisdictions typically agrees on a solution. If they do not agree, the grievance is then referred to an outside mediator for an opinion. Then, it goes back to the warden, whose decision is final unless the grievance involves policy which the warden does not control, in which case the commissioner also serves as an appeal level. In the California Youth Authority, where this model originated, it has been found that binding arbitration (with provision for some exceptions) works at least as well as mediation at the outside level. In CSC, the Inmate Grievance Coordinator is usually a clerk, conducts no mediation and has no authority to enforce time limits. The staff-inmate grievance committee is in operation in only about half the maximum- and medium-penitentiaries. An outside review board is called upon in less than 0.01 per cent of cases. Where the sub-committee recommended a time limit of six weeks from complaint to the final appeal level, three to four months is the norm in uncomplicated cases.

The Correctional Investigator does not feel the inmate grievance procedure should be abolished, largely because of concerns about workload and allowing the system a chance to resolve its own problems before an outsider is consulted. However, concerns about the effectiveness and timeliness of the inmate grievance procedure have been expressed in many quarters. This is especially true now; CSC has recently reduced the person-years for the Inmate Affairs Division in Ottawa from 12 to six and has provided that only those grievances involving significant policy issues should reach the commissioner's level. This seems likely to reduce the real and perceived influence of the division.

ASSESSMENT

The 1977 Parliamentary Sub-Committee on the Penitentiary System called the Office of the Correctional Investigator "a small response to a very large problem". That description is probably still apt today. The sub-committee recommended that the role of the office be reviewed in two years; no review has been done.

Overall, the office is assessed as being effective at resolving some types of inmate complaints and it is better than having no independent investigator, a situation which would lead to increased inmate frustration.

However, like the Parliamentary Sub-Committee, the Correctional Investigator assesses the problems of the penitentiary system as "too big to be amenable to solution" by one Correctional Investigator and his/her staff. An improvement in the administrative remedies available to inmates before resort to the Correctional Investigator seems essential to greater effectiveness in the view of the study team.

OPTIONS

The study team recommends to the Task Force that the government consider the following:

1. Maintain the status quo.

   This option has the advantage of providing some redress for legitimate complaints and the disadvantage of being too slow and inadequate to the task.

2. Internal improvements to strengthen the administrative remedies which inmates should exhaust before resorting to the Correctional Investigator. The inmate grievance procedure should be revitalized to conform more to the model described by the 1977 Parliamentary Sub-Committee.

3. Table a bill incorporating the changes approved by Cabinet to enhance the independence of the office of the Correctional Investigator.

CORRECTIONAL SERVICE OF CANADA

OBJECTIVES

To protect security by exercising effective and humane control of offenders sentenced by the courts, while helping them to become law-abiding citizens. In short, to provide custody, care and control of sentenced offenders.

AUTHORITY

The basis for the operation of the Correctional Service of Canada (CSC) is the Constitution Act 1867, the Criminal Code of Canada, the Penitentiary Act and Regulations, the Parole Act and various international agreements. It operates under the Ministry of the Solicitor General.

DESCRIPTION

The CSC operates 41 custodial institutions which are classified at all different levels of security, throughout the country. It also operates 21 smaller halfway-house facilities known as Community Correctional Centres. In addition, it is responsible for parole supervision, and delivers this service through a network of 75 district offices.

The work of the CSC is carried out in the various institutions, district offices, five regional headquarters and at national headquarters in Ottawa.

With a total of 18,300 offenders, either in institutions, on parole, or under mandatory supervision, the work of the correctional service is labour-intensive, and utilizes some 10,727 person-years.

The operation of such a large organization is complex, and several functions and activities are assigned to specialized branches and sub-departments which plan, budget, control, monitor and implement various sub-programs within the organizational framework. Examples of such activities are Education, Training and Employment; Security; Maintenance, Repair and Materiel; Food Services; Health Care Services; Parole and Mandatory Supervision; Offender Programs; Inspector General and many others.

BENEFICIARIES

In essence the CSC provides a program which is part of the overall criminal justice system, specifically a service that operationalizes both the ability of the criminal courts to impose prison sentences and the mandate of the National Parole Service to supervise released offenders. Therefore, the CSC provides a service to the people of Canada, in the provision of justice services.

Also, the offenders, who are involuntary clients of the program, can be said to be beneficiaries if they receive custody, care and control which assist them to function in a more positive, law-abiding way in society.

EXPENDITURES ($000)

	81/82	82/83	83/84	84/85	Estimates 85/86
Salaries & Wages	305,805	334,626	369,615	404,092	429,702
Other O&M	138,933	153,598	166,600	202,027	195,944
Capital	54,344	66,188	114,675	132,464	168,769
Grants	1,071	1,061	212	223	390
Contributions	156	354	817	1,083	1,027
TOTAL	500,309	555,827	651,919	739,889	795,832
Revenues	14,440	19,011	17,286	24,832	30,875
PYs	9,973	9,958	10,233	10,727	11,105

OBSERVATIONS, ASSESSMENTS AND OPTIONS

Because of the size of the Correctional Service of Canada and the diversity of its activities, the study team has grouped its observations about CSC under the substantive headings which follow. Parole supervision issues, however, are covered under the National Parole Board program profile.

SPLIT IN JURISDICTION IN CORRECTIONS ("TWO-YEAR RULE")

DESCRIPTION

The BNA Act states that the federal government is responsible for running "penitentiaries" and the provincial governments for "prisons". These two terms are defined in the Criminal Code, Penitentiary Act and Prisons and Reformatories Act such that a "penitentiary" holds persons serving sentences of two years or more, and a "prison" holds persons serving less than two years. As part of their constitutional responsibility for the administration of justice, the provinces also administer all community-based sentences, such as probation. The federal government, however, conducts parole supervision of federal offenders in the community after release. This basic split in federal-provincial responsibility in corrections is complicated by numerous refinements: most notably, the three largest provinces have their own parole boards for making early release decisions about provincial prisoners, and operate their own parole supervision programs. However, for federal inmates and provincial prisoners in the remaining provinces and the territories, the federal government does both parole decision-making and parole supervision (at no charge to the provincial governments concerned). The temporary absences occasionally granted to incarcerated persons are, by contrast, without exception administered by the government which houses the individual. Clemency (pardons and the purging of criminal records) are the exclusive responsibility of the federal government.

There is universal agreement among federal, provincial and private sector representatives that the two-year rule is entirely arbitrary, and a constitutional anomaly. Further, it creates practical difficulties which impede effective service delivery and efficient administration. Both federal and provincial governments operate programs of imprisonment and programs of community supervision of offenders. Both systems must bear the attendant administrative and other overhead costs associated with their service delivery. The two levels of government often end up competing in an unhealthy way for staff, community services and private sector resources. Since the great majority of related social services (education, health care, housing, etc.) are largely delivered at the provincial level, there are problems of planning and coordination created by two levels of government, placing often conflicting demands and priorities upon these services. Both levels of government have offenders who present similar needs - such as for alcohol dependency treatment - but the opportunities for sharing of programs and facilities have (at least to date) been limited by the logistical problems inherent in inter-jurisdictional transfers. The same has been true of the sharing of resources for offenders in both jurisdictions who present security problems, or who need and wish to be housed close to their home communities.

Despite these difficulties, and despite federal/provincial discussions on changing the split, which have occured periodically since 1887, the rule has remained. This has partially been the result of differing financial capabilities at the provincial level, and partially the result of lack of political will in various jurisdictions. Over the decades, there have also been differing vogues in the perceived best alternative to the two-year rule. At varying times, proposals have been made for a "six-month rule", a "five-year rule", total provincial delivery, total federal delivery, joint delivery, and a split along carceral/non-carceral lines.

The study team discovered that, at the provincial officials level, there was for the most part strong interest in taking over correctional services currently operated by the federal government, providing that adequate financial compensation would be made available. A few provinces supported provincial takeover, but had reservations which appeared to stem largely from concerns that federal funding would be or become inadequate. A number of provinces saw hope for better coordination in the recent discussions initiated by CSC for greater exchange of services between governments.

It should be noted that the new Commissioner of Corrections has recently begun discussions with each province on a new generation of Exchange of Service Agreements (ESAs). These ESAs are intended to allow sharing of certain correctional resources by both levels of government, and to renegotiate the traditional federal position on s.16(1) of the Penitentiary Act and transportation of federal inmates. For example, Alberta has a number of empty prison beds which it would like to see filled with federal inmates; other provinces facing the possibility of new construction are seeking capital contributions from the federal government, in exchange for a reserved number of beds for federal inmates. In many provinces, one level of government will be seeking to make greater use of the services of the community supervision personnel of the other level of government.

The major issues involved therefore appear to be:

a. **Effectiveness.** Would change (in whatever direction) involve significant improvements in the rationalization of resources, in coordination between correctional and other social services, and in planning and effective delivery of programs;

b. **Costs.** What principles should attach to any transfers of funds between governments which might be implied in a change in the split? What would be the best mechanism for funding? How closely monitored should the spending of such funds be? As a general principle, the study team believes that no change in the split should cause any level of government to incur additional costs which are not reimbursed by the tranferring level; and

c. **Standards.** Regardless of which alternative option is chosen, should national standards in corrections be a goal, and if so, how should they be enforced? The study team is of the view that the federal government retains the responsibility (by virtue of the criminal law power) to establish and maintain standards of human rights, programming and sentence mitigation, regardless of any change in service delivery responsibilities.

OPTIONS

Provincial officials appear now to believe, and the study team agrees, that there would be no value in replacing one arbitrary rule (the two-year rule) with another arbitrary one (such as a six-month rule). The study team therefore recommends to the Task Force that the government consider the following:

1. Exchange of services; No possibility of total provincial delivery:

   This option has the advantage of expending no effort on negotiations between the federal and provincial governments on developing a new split. It would, however, involve further joint efforts to make the most effective joint use of new and existing resources, through renewed ESAs. The value of these new ESAs, however, remains to be seen, since they are still largely at the negotiation stage. Further, while they will address some questions of resource sharing, they will necessarily not deal with the larger difficulties presented by the split. ESAs are entirely dependent on continuing good will among all parties.

2. Total federal delivery.

   This option would remedy the difficulties of fraction of service and programs, but would increase the size of the federal public service by some 12,000 employees. It would not be acceptable to certain provinces. It would not remedy, but could conceivably worsen, the problems of coordination between corrections and other social services, delivered largely at the provincial level.

3. Total provincial delivery in interested provinces.

   This option is apparently most attractive to the provinces themselves, at least at the officials level. It would involve a cooperative federal stance which would allow interested provinces to assume full responsibility for corrections within their borders, but not force other provinces to follow suit. There would be, as mentioned above, national standards established through the criminal law power, and monitoring by the federal government of the use of funds transferred to the provinces for carrying out operations previously handled federally. This option carries the best promise of coordination between police, courts and corrections and between corrections and other social services; of reducing total overhead in corrections across Canada; of encouraging regional and local innovation; of dealing with the offender at or near his or her local community (considered the best prospects for successful reintegration of the offender); and, of making the most effective use of programs for offenders who need them most.

4. Joint classification and placement.

Under this model, both levels of government would maintain their own separate operations in much the same manner as now, but through a joint board of classification, would decide where the offender should serve his/her sentence, in either jurisdiction. This model holds the possibility of achieving some further rationalization in the placement of offenders to the facility best suited to them. However, the practical difficulties to this model seem enormous. Both levels of government will be interested in keeping their populations (and therefore costs) to a minimum, and neither level will wish to have charge of the difficult, disturbed, or risky offender. The joint classification board will need to convene for decisions about transfers following initial placement, and this will involve lengthy delays, longer than the offender's total sentence in some cases. Some offenders will move constantly from one level of government to another (with resultant chaos), or will never move at all, as a consequence of failure of the two parties to agree. There will be no clear lines of parliamentary accountability for highly publicized failures, such as escapes of inmates placed in lower security than needed.

PRIVATIZATION OF CORRECTIONAL FUNCTIONS

DESCRIPTION

At present, the private sector is heavily involved in certain areas in federal corrections, but very little or not at all in others. The area of heaviest involvement is the post-release supervision area, where the voluntary sector (such as the John Howard Society and the Elizabeth Fry Society) supervises large numbers of offenders after release and conducts community assessments (CAs) on large numbers of offenders prior to decisions regarding early release. In addition, about half the medical and dental staff in CSC, and all the major surgical functions, are privatized through personal service contracts. Most educational instructors are private-sector also, hired through contracts with existing educational institutions, while most vocational instructors are CSC employees.

CSC operates 21 halfway houses across the country -- Community Correctional Centres (CCCs) -- but also contracts for bedspace on a per diem basis with some 160 privately owned and operated halfway houses and Community Residential Centres (CRCs). The design and construction of new penitentiaries is also largely privatized, through contracts written by the Department of Public Works. In addition, services such as chaplaincy, fire protection and refuse removal are almost entirely privatized.

Various issues are critical to decisions about privatizing corrections further. Among the key issues are:

a. Costs: Although a few areas seem to lend themselves to cost-saving through privatization, thers which have traditionally been cheaper when delivered privately (such as parole supervision and CRCs), may not continue to be cheaper for much longer. The savings in these areas have come largely from lower overhead costs, much lower salaries in the private sector and limited programming and staffing. Pressures for increased accountability, the fallout from isolated tragic incidents, and the increasing reluctance of the non-profit sector to deliver a restricted service for low wages are, however, beginning to reverse this historical trend. In Ontario, for example, correctional administrators report that CRC costs are now approaching or exceeding those of certain comparable government-run services.

b. Delegation of peace officer powers: There is concern about delegating peace officer powers to the for-profit sector especially in higher-security correctional environments, which are inherently coercive. Early U.S. experience with higher-security private prisons suggests that governments will be held fully liable in the event of alleged negligence in the use of force by private contractors, especially if government has not established and monitored compliance with extensive standards regarding recruitment and training of staff.

c. Competition: Even in the much larger U.S. market, the number of private suppliers of correctional services remains small. This leads to concerns about government's ability to ensure compliance with standards and replace unsatisfactory suppliers.

d. Enforceable standards monitoring and control: As suggested, extensive standards and government review of some private correctional operations seems necessary, and may lead to higher, not lower, overall costs. Detailed standards will be especially important because government guidelines on master-servant relationships in contracted services will preclude CSC giving ongoing direction to the contractor on a daily basis; and

e. Protection of former civil servants: CSC employees should be given priority in hiring by private contractors and an opportunity to incorporate and bid on contracts for service delivery.

OPTIONS

The study team recommends to the Task Force that the government consider the following for privatization or further privatization:

1. Food services.
   CSC employs 296 staff, at a salary cost of $11,037,604, to manage and carry out food service activities. In addition, 1,410 inmates work in food preparation and about 400 inmates work on CSC farm annexes which supply food. Experience in other jurisdictions suggests that costs can be reduced by at least 10 per cent through privatization of staff duties, with no attendant reduction in quality of service. CSC is actively studying this area for privatization, among many others.

2. Education and vocational training of inmates.
   CSC employs 299 persons, at a salary cost of $12,569,337, to manage and deliver academic and vocational training to inmates. In addition, some $12 million is spent on contracts for educational and vocational training with outside institutions. Experience suggests that further privatization of these services would not be less expensive overall, but does improve the quality of the training received because burnout is less likely under a privatized system where staff turn over more frequently.

3. Employment of inmates.
   In 1984/85, there were 6,574 inmates employed while incarcerated in CSC institutions, excluding the 1,575 engaged in education or vocational training. The majority of employed inmates (56 per cent) work at institutional maintenance, clerical tasks, food production, etc. Some 18 per cent work at jobs related to offender programs. About 16 per cent work in prison industries, including automated data processing. Only about 400 inmates (or 6 per cent) work (typically at minimum wage) for outside industries operated by private enterprise. This number has remained stable for many years, despite periodic drives to attract more outside employers to CSC industries, or to establish their own industries, using CSC inmates as employees. The benefits of doing so are obvious: it reduces CSC costs in inmate pay and O&M, while allowing the inmate to pay taxes, family support, higher room and board, and to save more towards eventual release. For these reasons, further efforts to attract private employers to CSC are to be encouraged.

Unfortunately, various factors inherent in the penitentiary environment minimize its attractiveness to private industry: the hostility and low productivity of inmate-workers cause inefficiencies and delays in shipping and receiving; the security risks presented by inmates require (among numerous other problems) much higher-than-average supervision costs; the remoteness of many institutions causes excessive freight and other operating costs; and the hostility of unions and the general public to industries which benefit from such arrangements makes them unattractive. Currently, CORCAN (the CSC industries program) loses about $10 million annually, and sells almost exclusively to Supply and Services Canada. Despite the publicity surrounding efforts in the U.S. to establish "factories within fences", as of January, 1985, there were only 26 such projects in the U.S. employing less than 1,000 prisoners, or about 0.2 per cent of the total U.S. prison population.

4. Health care.

CSC is currently preparing pilot projects to privatize entire health care units in six penitentiaries, rather than merely contracting with individual medical officers. Other jurisdictions report improved and more diversified health care from this approach, but it is expected to be more expensive overall.

5. Community-based services.

Although no precise workload figures are available, CSC already contracts with the non-profit sector for large numbers of community assessments (CAs), parole and mandatory supervision services and halfway-house residential services. For the most part, because of lower wages and overhead in the non-profit sector, these services have been and still are cheaper than the comparable CSC-provided service, although (perhaps for that reason) there are some in CSC who believe that the quality of the privately delivered service is poorer and that there is insufficient accountability. Some of the provincial governments operate no halfway-house facilities

(CCCs) of their own, but rely entirely on private CRCs and are satisfied with the arrangement. Because of limited capital in the private sector, CSC should examine the feasibility of leasing existing CCC facilities to the private sector and contracting with them for the running of these facilities.

All of these services (CAs, CCCs and supervision) seem suitable for further seem suitable for for further privatization, given the private sector's greater potential for delivering specialized and diversified service, providing that sufficient funding is made available. In order to ensure stability of programs, consideration should be given to block funding instead of fee-for-service for residential facilities.

6. Private penitentiaries.

These must be distinguished from halfway-house facilities, in that penitentiaries are of higher security and both require and exercise coercive powers such as search and discipline. In the U.S., the recent establishment of private prisons in some jurisdictions has been caused by massively overcrowded prisons, in combination with the difficulty of capitalization through public bond issues. In Canada, neither situation pertains, and it appears prudent to avoid privatizing penitentiaries until more experience in the U.S. can suggest answers to vital questions about greater or lesser costs, programming, the usefulness and costs of standards and monitoring, and the use of peace-officer powers by contractors. In the meantime, Canada should maintain a watching brief on private penitentiaries and be free to experiment with limited pilot projects.

7. Technical services.

As noted earlier, numerous services in this area are already contracted-out. In addition, transportation and fleet management, inventory control and warehousing would appear to be suitable for privatization.

8. Administration.

Numerous administrative services are suitable for further privatization, including staff training, publication, employee cheque issue, inmate pay, certain routine audits and certain coordinated information services.

EFFECTIVE STAFFING MODEL FOR CSC

DESCRIPTION

With more than 11,000 inmates in federal penitentiaries and projected increases in future years, questions regarding the building and staffing of prisons and the effective deployment and utilization of staff resources, will have a significant impact upon CSC budget costs.

The most appropriate point of departure to examine these issues is to review the objectives and goals of the organization. Therefore, the mission statement developed in the Ingstrup Report of November 1984 is of interest:

> "The Correctional Service of Canada, as part of the criminal justice system, contributes to the protection of society by exercising safe, secure and humane control of offenders, while helping them become law-abiding citizens."

Initiated under the terms "safe", "humane" and "helping" are a host of integral programs intended to operationalize them. These include: employment programs; leisure-time activities; security; special needs; family and community; placement; and, transfers. The security program has the most pervasive presence and major overall impact upon the inmates of penitentiaries.

In providing security coverage at various posts and activities, four operational models have been identified as methods of security staff deployment. These are: the squad system; the living unit system; the team concept; and the functional unit management system.

The squad system is a basic staff deployment practice that was derived, apparently, from a semi-military tradition from the very earliest years of the penitentiary service. The security personnel are organized in squads, ultimately responsible to the Assistant Warden, Security. Each squad has a leader (CX-COF-6/5) and a number of intermediate supervisors (CX-COF-4/3).

The deployment of correctional officers to shifts and posts is done on an individualized basis. Thus, different leaders and supervisors can be assigned and there is apparently no team integrity of supervision. Staff are assigned according to the requirements of the shift roster.

The living unit system was the outcome of the gradual development of theory and practice in the human services and behavioral sciences field. Some experimentation with institutional design was undertaken and innovations in program design were formulated, based on the therapeutic community model, utilizing small group dynamics. By 1971, a living unit divisional instruction was issued; a handbook entitled "The Living Unit Program" was published in 1972.

The living unit system was designed to assist inmates to become better citizens by designing a milieu that was conducive to improved social adjustment, by improved communication between staff and inmates.

The objectives were to create positive staff-inmate relationships, foster a sense of responsibility towards self and others, promote learning of social skills and provide the necessary degree of dynamic security. The living unit system was designed to integrate security and program activities in a more positive environment.

The team concept was developed through a search for alternative approaches to the management of correctional facilities during the 1960s and 1970s.

The basic rationale was that the security staff should get to know the inmate, thus improving dynamic security by being able to better predict inmate behaviour and to assess program requirements. Correctional staff were to be divided into two groups, correctional or security, based upon capability and interest. The correctional team would work directly with inmates; the security teams would work on perimeter posts and other non-inmate-contact posts. A team supervisor was assigned, and team leaders would rotate with their team on the same shift schedule.

Implementation commenced at Dorchester in 1974 and subsequently in other institutions. There was increased focus upon frequent contact and interaction between staff and inmates. This concept, however, gave way to a full rotation of all correctional officers through all posts because of apparent conflict between the two groups of officers. Once this happened, the principles of the team concept were breached. Team leaders no longer rotate on the shift with their teams.

The objectives of the team concept were to create constructive supervisor-employee relationships, increase accountability, maximize the guidance and counselling abilities of the supervisors. It was held that it would increase better security supervision and maximize effectiveness of the CX group. As indicated, elements of the team concept gradually eroded.

The functional unit management system came into existence during the 1970s in the Federal Bureau of Prisons, United States Department of Justice. It incorporates principles of decentralized management by accommodation units and is somewhat similar to the living unit system in that there is more interaction between inmates and the staff who make decisions. The program is delivered by a unit manager along with case managers, counsellors, educators and clerical staff, all assigned to and present, in the housing unit. The Federal Bureau of Prisons has adopted this model in all its institutions. The old hierarchical structure is removed and there is better contact between inmates and staff. The units contain inmates who are permanently assigned together and a multi-disciplinary staff unit provides the program services, including security correctional officers. The unit manager has administrative authority and responsibility for the unit.

An evaluation study undertaken in September 1983 had as its objective a cost-comparison of the four models, by costing out the various options and staffing levels, by means of an organizational simulation exercise conducted at 10 penitentiaries.

In order to carry out this evaluation, an effort was made to assure the benefits which each model would be seen to provide. Benefits were defined to reflect desirable outcomes which seemed to reflect the factors in the mission statement quoted above (e.g. "ensures required degree of safety and security for public, staff and inmates" also "sustains a normalized regime" and "promotes effective utilization of available human resources").

The outcome of the study was that eight of the 10 simulation exercises showed the squad system to be a less expensive model for such elements as security, case management and social programming. Two institutions sampled indicated that the living unit system would result in less costs. However, the report indicated unique features in these institutions that would limit any generalization of the findings.

The team concept did not offer any potential savings, nor any significant benefits, as it has evolved.

The functional unit management system was not able to be costed out in the exercise, as it had not been in place previously in any Canadian penitentiary and there were methodological problems in applying a simulation exercise to this model.

The living unit system appears to address a greater number of benefits, not only in security, but also in the area of preparation of the inmate for release within a more normalized environment and the promotion of staff/inmate interaction. Therefore, it is asserted that it comes closer to the aims and goals set forth in the mission statement above.

In summary, the results of the study undertaken indicate that no single model is both the least expensive and the most beneficial. It is difficult to place a specific cost on intangible factors such as better staff-inmate interaction, normalization of environment, more direct observation and control of inmates, more involvement of staff in various functions which maintain job interest, and staff morale.

Based on the exercise, the staff establishment required to operate a medium security institution on a living unit model would utilize five person-years more than that required for a squad system. This would save $249,940 for an institution of this type and size, although the figure will vary with different institutions.

Some of these factors lead, in turn, to decreases in negative institutional activities. Inmate assaults tend to decrease, and there is less reason to classify inmates as "protection cases" and transfer them to special units. However, the living unit system is not necessarily the most effective or appropriate model for all institutions, especially the higher security institutions. There is an indication that some living unit officers tend to be subject to the work-stress syndrome (burnout) if assigned to living units permanently, in some institutions.

There are also now two institutions using a form of functional unit management and this model should, the study team believes, be evaluated and compared in terms of costs and results in the following months.

At this time, there are no definitive data as to the specific efficiency or effectiveness of the different staff deployment models. Further comparison and analysis of benefits should be carried out in this area in the view of the study team.

It is clear that building very large penitentiaries, and staffing them with minimal staffing levels or program opportunities is not a desirable alternative to the models now in existence. The CSC has a heavy responsibility for the safety and security of inmates in its charge, as well as a responsibility to provide opportunities for inmates to improve themselves.

Any minimally staffed "warehouse" model, which could lead to increased inmate assaults, deaths and restiveness, costly riots, and public criticism as inhumane or unconstitutional, is considered by the study team to be a false economy, both from the standpoint of the financial costs of the above-noted problems and the financial and human costs of its impact on successful post-release reintegration.

OPTIONS

The study team recommends to the Task Force that the government consider the following:

1. Continue to utilize the living unit system but enlarge the potential size of the units to accommodate more inmates. This would obtain economies of scale and offset some of the increased staffing costs. However, an increase in the number of inmates imprisoned in such a unit could reduce or eliminate completely the benefits outlined previously for this model.

2. Continue to monitor the benefits and factors involved in comparison between living unit and squad models and authorize further construction of institutions in regions as required, based upon needs and the most advantageous configuration, as perceived by the senior management group that would operate the institution.

3. A review of the feasibility of achieving staff savings by combining certain staff rosters related to offender programs and case management in a modified living unit model could be undertaken (see "Administrative Efficiencies in CSC.").

USE OF PART-TIME EMPLOYEES

DESCRIPTION

The operation of Canadian prisons and penitentiaries in provincial and federal jurisdictions, as well as those of other nations, generates a high level of costs in overtime wages. Although there are overtime costs generated by technical and support staff on a minimal level, the major portion in the CSC is generated by the security program. There are a certain number of security posts that must be manned by correctional officers. If staff are absent due to sickness, training programs, annual leave, or if there is an incident requiring deployment of additional security staff, overtime costs are liable to be incurred.

Under current arrangements, person-years are allocated to make provision for substitute officers to cover some of the absences. However, in a December 1981 report on overtime, it was acknowledged that a reasonable level of substitution could not likely be guaranteed in most institutions. This was because of organizational requirements such as the "step-down" rule, grouping requirements for training and fractional distribution of person-years. It is also indicated that extra person-years allocated are often utilized in the creation of new operational posts. Increasing person-years for relief purposes only does not lead to a proportionate decrease in overtime.

The costly problem of overtime, for example, the $24.5 million expenditure for 1981/82, could be addressed by using indeterminate part-time officers instead of calling in shift staff, the study team believes. If regular (full-time) officers assigned to a shift have to be called in for some special duty, or to replace other regular staff who are absent, they will generate overtime costs. Often the rate of pay is at double-time rather than the regular overtime rate of time-and-a-half. This factor is governed by whether an employee is on his/her first-day-of-rest or on a statutory holiday.

It has been pointed out that many employees are unwilling to work overtime at the lower rate. In 1980/81, an overall average of 22 per cent of 900,000 regular overtime hours was paid at double-time rate. In some institutions, this percentage was as high as 40 per cent.

The fundamental question is whether the use of part-time officers would substantially reduce high overtime costs. Issues involved are those of training requirements, employee fringe benefits, the CX collective agreement, the Public Service Superannuation Plan and sources of recruitment for part-time staff.

The advantages of using part-time correctional officers are that they can be scheduled to work specifically during peak periods, and their availability provides more flexibility in scheduling holidays and training for full-time staff. Overtime costs are reduced when part-time staff are scheduled to fill extra shifts. Use of this method is also assumed to be less costly and more effective than the full-time, substitute-officer system. Less overtime reduces fatigue and stress for full-time workers. Availability of a pool of call-in, part-time officers also produces a larger manpower inventory to be drawn upon in cases of emergency.

However, in the view of the study team, there are some negative factors to be considered. Administration overhead for part-time workers is higher, because the cost of recruiting, hiring, training, benefit administration, record-keeping and clothing must be written off against fewer hours of work. Part-time workers tend to be more difficult to supervise and appraise and add to the general supervision workload. Fringe-benefit costs are higher per hour worked for part-time employees. Objections and resentment by full-time officers to part-time employees could cause dissension in the workplace. If overtime is significantly reduced, full-time staff morale may be affected by the smaller income.

In 1984, some $21,693,692 were spent for the overtime performed by correctional officers. In a draft report submitted in October 1985, potential savings were identified if a system of part-time officers were used to replace either some full-time or substitute-officer positions, and also utilized as an officer call-in capability for unscheduled absences. The savings generated could amount to:

- $5,544,848 (some full-time position replacement) with a potential to generate work up to an additional 16 hours per year; and

- $5,544,848 (replacing the substitute-officer plan).

Additional savings of $3,071,862 could be generated by using part-time staff on a call-in basis.

Although implementation of part-time correctional officers would be cost-effective, it could cause some problems. Gradual conversion of full-time positions to part-time positions could take from three to five years. Some institutional use of substitute officers in the intervening time may be required. The program implementation would also depend upon successful negotiations between the union and Treasury Board; it is expected that the union would strongly oppose the implementation of part-time correctional officers.

OPTIONS

The status quo would avoid protracted negotiations with and resistance from the union, which is adamantly opposed to the use of part-time officers and seeks to have an inhibition upon any part-time CX position negotiated into its next contract. In addition, leaving the situation as is will avoid any short-term need for an increase in substitute person-years. However, the status quo option would continue the high cost of overtime.

The study team recommends to the Task Force that the government consider implementing an indeterminate part-time program. It is suggested that this be initiated on a pilot-basis at one institution and then expanded in that region and others.

FEDERAL/PROVINCIAL RESPONSIBILITIES UNDER 16(1) PENITENTIARY ACT

DESCRIPTION

The Penitentiary Act stipulates that an offender sentenced to a term of two years or more "... shall not be received in a penitentiary until after the expiration of the time limited by law for an appeal". This provision was apparently designed to ensure that the inmate was kept close to his or her counsel during the period immediately after trial. The inmate has 30 days to decide whether or not to lodge an appeal. When first issued, this section had some merit as there were only seven penitentiaries in Canada; the telephone and airplane were not in use and mail service not as swift or regular.

OBSERVATIONS

A case could be made that when an inmate is sentenced to over two years and becomes a federal inmate, any costs of accommodation or transportation should be borne by the federal agency, according to provincial officials. There is concern about the inmate sentenced to a lengthy term in the penitentiary, possibly in a maximum security institution, having to stay for a month in a medium/minimum security facility. These cases require a high level of security once sentence has been imposed.

With regard to transportation, the penitentiary inmate is transported under escort of bailiffs, RCMP (Provost) or provincial deputy sheriffs and the contention is that the federal government should bear these costs.

OPTIONS

The study team recommends to the Task Force that the government consider the following:

1. The Penitentiary Act could be amended to state that any federal inmate, with a sentence of two years or more, would be allowed seven days to instruct counsel as to the decision to appeal. The inmate could then be transported to the penitentiary and have further time (23 days) to consider the matter.

The CSC is perceived as using the 30-day period to undertake an assessment/penitentiary placement recommendation. Although this is a useful process, it should not necessarily entail a 30-day period. The CSC could absorb the costs of keeping the inmate for the seven days, as above. If more time is needed for assessment, a request to hold could be made and the additional days added to the cost. If the provincial institution has a concern about keeping a particular inmate, the person could be moved to the closest penitentiary, after seven days, for appropriate security level custody.

2. The inmate's right to consult with his or her lawyer should be recognized in regulations and telephone access granted appropriately, at the penitentiary.

3. Maintain the status quo whereby the provinces reluctantly keep federal convicts and receive no financial acknowledgement for this service or for transporting them to penitentiary.

4. In the context of negotiation with the provinces, the CSC could assume financial responsibility for offenders sentenced to a federal term from the date of sentence, regardless of the offender's appeal status, or waive of appeal.

A preliminary forecast in 1982, (adjusted to 1985 costs), would put the cost of this option as follows:

	Full Cost	**Marginal Cost (33%)**	**Marginal Cost (17%)**
Additional offender maintenance costs (1982 Ministry figures adjusted).	$8,553,000	$2,823,000	$1,454,000
Transportation and escort costs to admitting institution for 84/85 ($60/inmate admission X 4,341 admissions)		$ 260,000	

5. The cost of transporting revoked parolees from the provincial centres to the penitentiary could be acknowledged and borne by the CSC. At the present time, Ontario receives an agreed amount ($10,000) for this service. This item would need to be costed out and funds allocated to the provincial systems for carrying out this task with federal offenders.

EARNED REMISSION

DESCRIPTION

Earned remission was established in the nineteenth century, and its current enmeshment with "mandatory supervision" is previously discussed.

The revision to the Penitentiary Act (1978) abolished "statutory remission" and established that an inmate could earn up to 15 days remission for every month served up to one-third of the total sentence.

The system of earned remission has been fraught with the administrative difficulties of applying the intention of section 24(1) Penitentiary Act, in which it is stated that an inmate may earn 15 days if he/she "applies himself industriously".

Subsequently it was decided that "apply himself industriously" is, in fact, "satisfactory" performance, and would earn the maximum 15 days' remission. To reduce bookkeeping load and simplify the recording and sentence administration aspect, every inmate is automatically credited with the 15 days, and adjustments are made retroactively if remission days are "lost".

The intended benefit of earned remission is that it encourages the inmate to work industriously, to be of good behaviour and to aim at self-improvement. The existence of such an inducement provides a management tool which assists staff in obtaining cooperative behaviour from inmates. However, some feel that the problem of administering the earned remission program is that remission is credited automatically, and is not as effective as it could be in motivating inmates to work hard and behave well.

One of the issues connected to remission is that of the premature release of a dangerous offender prior to the actual termination of sentence. If all offenders can earn remission, then dangerous offenders can be released early. If certain, offenders cannot earn remission, then who decides which ones?; and, would this reduce the efficiency of remission as a prison management tool?

The remission program is administered through Sentence Administration, and the operation of the disciplinary panel and/or the issuing of performance notices (PN) by various staff to inmates. There are no specific costs attached to this program, as the functions are carried out by case managers, sentence administrators and others.

OPTIONS

The study team recommends to the Task Force that the government consider the following:

1. Maintain the status quo. A system with some perceived defects would be continued in operation, although it would entail minimal disruption, and neither add to, nor decrease, inmate counts.
2. Abolish earned remission. There would be a minimal saving in staff administrative costs. An estimated maximum increase of 25 per cent in inmate population would ensue, with substantial additional costs. There would also be the loss of a tool for encouraging positive inmate behaviour. However, no dangerous offenders would be released prior to the end of their sentence.
3. Modify the legislation to reflect differentiation of remission by security level. This could tend to motivate inmates to positive behaviour in order to obtain lower security classifications. It could thus assist in a general "cascading" of inmates towards lower security and eventually out of institutions. It would be administratively very complex, and lead to increased grievances and litigation over security classification.
4. Use graduated performance levels to encourage more than satisfactory performance, along with a security level differentiation. This partially meets the concerns expressed about "high risk" inmates being released prior to termination of

warrant. However, they would still receive some remission. There are implications if mandatory supervision is, or is not, continued in operation.

5. Keep the current practice of two-thirds-of-sentence potential release date (with the inmate earning, or not losing, "points or marks") and having the institution notify the National Parole Board if an inmate is considered dangerous. Most inmates would thus earn a release, subject to supervision by the Parole Board, but the dangerous offenders would not be released until the warrent expiry date.

COSTS AND USE OF INCARCERATION

DESCRIPTION

The use of incarceration in Canada has become a concern on a number of levels. From 1945 to 1982, the number of persons incarcerated in federal penitentiaries has more than tripled. During the same period, provincial prison populations increased about two-and-a-half times. In 1984/85, the federal government spent $751 million on adult correctional services, and the provincial governments spent approximately $600 million on adult and $250 million on juvenile corrections. At the federal level, expenditures increased 23 per cent (in constant dollars) over the five-year period 1979/80 to 1983/84 and provincial expenditures increased 9 per cent. The great majority of these expenditures were on incarceration. Incarceration costs approximately 10 to 15 times as much, on average, as community-based correctional alternatives.
In 1983/84, there were 24,096 persons employed at the federal and provincial levels in adult corrections alone.

According to the best available international figures, Canada is a comparatively high user of imprisonment in relation to similar Western industrialized nations. The number of persons in adult prisons per 100,000 total population is 24.6 in the Netherlands, 43.0 in Japan, 63.3 in Australia, 66.7 in France, 85.1 in England and Wales, and 96.9 in Canada. Only the U.S. at 207.3 shows a rate consistently higher than Canada's. Our imprisonment rate is half that of the U.S. but our violent crime rate is only one-fifth of theirs.

At the same time as there are concerns about the costs of imprisonment, doubts about its value are also prevalent. In some jurisdictions, a majority of the jail population is made up of Natives or persons who are in default of payment of a fine. Correctional administrators consistently report that a large proportion of persons in their jails do not belong there in the sense that they are dangerous or have committed offences which can be punished adequately only by a sentence of incarceration. The Law Reform Commission concluded that there is an over-reliance on imprisonment in Canada and that prison is a "costly sanction that should only be used as a last resort".

It is likely that the high use of imprisonment in Canada is at least partially due to a shortage of meaningful alternative sanctions and strategies. Too often, judges are left with an unpalatable choice between probation and prison, with no programs in between for dealing with such crime-related problems as drug and alcohol dependency, lack of job-finding skills and family violence. There is also a paucity of alternative punishments which are less costly and less debilitating than prison.

Prison populations are determined primarily by the number and length of sentences of incarceration and the rate of release from incarceration. The Canadian Sentencing commission has been appointed, as part of the federal government's Criminal Law Reform exercise, to examine key issues related to criminal sentencing, including maximum terms, guidelines for sentences and procedure. The commission is due to report in May 1986, but has asked for an extension until September 1986.

OPTIONS

Because of the nature of its inmate population there is little flexibility in the federal penitentiary system. However, there are some ways in which the total incarcerated population in Canada could be reduced. The study team recommends to the Task Force that the government consider the following:

1. A moratorium could be imposed on all new penitentiary construction at the federal level. Crime-trend data suggest there may be a levelling off or even a drop in prison populations during the 1990s as a result of the aging of the baby boom population. On the other hand, research also suggests that prison cells will tend to be filled if they are available; marked growth in prison populations follows periods of intensive building.

2. The Canadian Sentencing Commission could be directed to develop qualitative sentence guidelines which would:

    a. ensure no further growth, or even a reduction, in the total incarcerated population;

    b. require judges to give written reasons for imposing a jail term;

c. require the consideration of community-based alternatives prior to the imposition of a jail term; and

d. require judges to specify in each case the purposes to be fulfilled by each sentence of incarceration.

In this regard, the study team suggests that the Sentencing Commission also be asked to examine the Ouimet Committee's 1969 recommendation that sentences between six months and two years be abolished.

3. More of the existing research and development funds in the federal justice area could be directed towards establishing meaningful programs of community-based corrections. However, currently available developmental funds for all justice-related issues total less than $8 million. The study team feels that a program on the order of $100 million would be needed. Should the effort succeed, financial benefits could return to the federal government from reduced new capital construction and operating costs, provided that the provinces agree to house sufficient numbers of federal inmates in their own institutions.

4. If provincialization of correctional services is to be pursued, a cost-sharing formula could be explored which would provide greater proportional federal funding for non-carceral than carceral programs. (See "Split in Jurisdiction in Corrections".)

PAROLE

OVERVIEW

The remission of some portion of a penitentiary sentence as a reward for good institutional behaviour and to further the process of rehabilitation has been a valued feature of the Canadian justice system since before Confederation. In 1899, remission was formalized in the Ticket of Leave Act, and was administered until 1959 by the Remission Service. In 1959, the National Parole Board was established, pursuant to the Parole Act.

At present, there are four forms of conditional release administered by the Board: Temporary absence (TA), Day Parole, Full Parole and Mandatory Supervision (MS). Each has a distinct purpose. Temporary absence (whether escorted or unescorted) is used primarily for humanitarian reasons and eligibility is limited in the federal system to one 72-hour absence per quarter. Day parole, which usually requires the inmate to return each night to an institution or a halfway house, is commonly awarded when an inmate has been placed in a job outside the penitentiary as part of a resocialization program. Inmates become eligible for TA and day parole after serving one-sixth of their sentences. Full parole is used to release deserving inmates into the community, under the supervision of parole officers. Inmates become eligible after serving one-third of their sentence, and typically receive parole at about the halfway point. Mandatory supervision requires that inmates who have not been found suitable for full parole be released under supervision after serving two-thirds of their sentence.

Mandatory supervision is a controversial form of release. The rationale of MS is that it is better for the inmate and for society that he or she be released under supervision, and be helped by the parole service to reintegrate into society, than to be held until the end of the sentence and then released into the community without assistance. Unfortunately, offenders on MS frequently fail to succeed and are returned to penitentiary. On rare occasions, offenders on MS commit additional crimes, and the attendant publicity brings the entire parole process into disrepute because the public does not understand that the law, not the National Parole Board, caused the release.

Because of public concern, the power to "gate" certain offenders has been included in Bill C-67, which is now before Parliament. Under this provision, an inmate judged too dangerous to be released can be rearrested at the prison gate after release on MS and held until expiry of his or her sentence. Given the difficulty of predicting violent behaviour by a given individual, however, the effects of gating cannot be foreseen.

In addition to spectacular parole failures, other serious problems exist. National Parole Board officials take the view that only they can decide on issues such as temporary absence and day parole. The board has severely restricted the TA authority of federal wardens which, in the wardens' view, has seriously reduced both the value of TA and their ability to effectively manage their inmate populations. Provincial corrections officials take the same view but they circumvent the TA provisions of the Prisons and Reformatories Act because it is essential to the management of their institutions.

OPTIONS

The study team recommends to the Task Force that the government consider the following:

1. Amendment of the Parole Act to achieve provincial objectives would enhance federal/provincial relations.

   The slowness of federal parole for short-term provincial inmates is also a problem which provincial officials alleviate by using TA. This is not a factor in Quebec, Ontario or British Columbia, the three provinces that have established provincial parole boards for provincial inmates.

   Amendment of the Prisons and Reformatories Act would also alleviate this difficulty.

2. The unfettered discretion exercised by members of the National Parole Board raises questions with respect to the possibility of disparity -- and therefore of inequity -- among parole decisions. Objective guidelines for decision-making exist and are used in other jurisdictions including the provinces, but not by the NPB.

A requirement for guidelines for all NPB-decisions, and procedural safeguards for inmates and parolees, would do much to resolve the doubt that the board, with many members nationwide makes equitable, comparable decisions across Canada.

3. The membership of the NPB is another area of controversy. It is widely believed that the overall calibre of the board has decreased in recent years because a number of less qualified, less knowledgeable, less well educated members have been appointed.

   This problem, whether real or imagined, could be resolved if the chairman and the members were nominated by a screening committee of senior federal, provincial and private sector officials who would base their recommendations on objective, relevant, established criteria.

4. The NPB also seems to be overstaffed, at least in comparison with the provincial parole boards. For example, the NPB has 36 national members, about 100 community members, a support staff of about 250 person-years and a budget of about $13 million. These resources are expended in making 25,000 decisions, which under the NPB best estimate, amounts to some 10,000 actual hearings. (The management information system cannot provide the necessary data.) The Ontario Parole Board, on the other hand, carries out 6,000 hearings with a staff of 16 board members, 30 support staff, 100 community members and a budget of about $2.75 million. The B.C. board has six members, six staff, 23 community members and a budget of $0.5 million, and carries out about 2,000 hearings. It therefore seems clear that provincial boards, where they exist, are more efficient than the NPB.

   In the long run, it might be cheaper, quicker and better if provinces took over the parole responsibility for both provincial and federal inmates. The federal government could negotiate a suitable financial arrangment.

5. Supervision of parolees was formerly carried out by NPB but this responsibility has been transferred (1978) to the Correctional Service of Canada. The CSC does case preparation in the institutions and contracts with the voluntary sector for the management of halfway houses, etc. All provinces have probation officers, who already supervise federal parolees in certain areas, under agreement with CSC.

   It would be more efficient and cheaper if the CSC were to withdraw from supervision and have it carried out by provincial officers under agreement with the federal government.

6. The NPB also is responsible for the management of applications for pardon, and expends about 57 person-years and $2.3 million in cooperation with the RCMP, which expends about 28 person-years and $1.2 million.

   It seems, given that the RCMP controls the system on which criminal records are kept and also carries out the relevant community investigations, that the RCMP should take responsibility for the entire process, which would mean substantial savings in NPB resources.

CONDITIONAL RELEASE
National Parole Board

OBJECTIVES

The National Parole Board is responsible for parole decisions for federal inmates and provincial inmates other than those held in the provincial institutions of Quebec, Ontario and British Columbia. Some jurisdiction is shared with the Correctional Service of Canada and with provincial corrections officials.

Parole is administered under four separate programs, each of which has a specific objective, depending upon the intended purpose of the conditional release. The programs are Temporary Absence, Day Parole, Full Parole and Mandatory Supervision.

AUTHORITY

Parole Act
Prisons and Reformatories Act
Penitentiary Act
Criminal Code of Canada

EXPENDITURES

Dollars $13 million
TOTAL budget = $15.3M ; $2.35M are devoted to Pardon process

PYs   255
TOTAL NPB PY = 313   ; 57.5 are used in Pardon process

DESCRIPTION

The four programs are described in the following pages.

BENEFICIARIES

The beneficiaries are inmates who receive conditional liberation, their families and, in the abstract sense, the Canadian public.

OBSERVATIONS

Nil.

ASSESSMENT

There is general agreement among federal and provincial corrections officials that temporary absence and full parole are necessary and valuable forms of conditional release. Day parole is seen as a form that would be unnecessary if the temporary absence power were more effectively used. Mandatory supervision is generally viewed as a program that has failed and which should be either abolished or significantly amended.

OPTIONS

The study team recommends to the Task Force that the government consider the following:

A short-term option would be directed to improving the efficiency of the existing parole system. This would maintain the status quo with respect to federal and provincial parole jurisdiction, but with several significant changes in federal procedure:

a. Members of the National Parole Board would be more carefully chosen for background in the justice system, education and other relevant characteristics.

b. Objective parole guidelines would be required under the parole regulations to provide national standards of decision-making, ensure that all relevant factors would be considered and to provide the appearance as well as the substance of uniform decision-making across Canada. Parole Board members would provide written reasons for overriding the presumptive decision derived from the guidelines; the Parole Board would have no responsibility for the "quality" of parole supervision, which would be the responsibility of CSC.

c. Authority over temporary absence for federal inmates would be transferred back to CSC (wardens) which would reduce if not eliminate the need for day parole and would provide a significant saving to the NPB, which expends 30 person-years and $1.3 million on TA decisions, and 116 person-years and $5 million on day-parole decisions. No significant new resources would be expended at the institutional level.

d. A "gating" procedure would exist for inmates deemed too dangerous for release on mandatory supervision.

These changes would fulfill the federal mandate, enhance the quality and equity of parole decision-making, provide greater flexibility in management of institutional populations and save significant expenditures of money and person years. No negative consequences are apparent.

A long-term alternative would include the above provisions but imbed them in a revised Parole Act. The revised Act would set out, inter alia:

a. requirements for membership on the National Parole Board as a regular, temporary, part-time or community member, including a screening/nomination body;
b. requirements for objective guidelines for decision-making with respect to both parole and "gating";
c. transfer to wardens of authority for TA, including authority for placement in a halfway house without the necessity of Day Parole;
d. eligibility for parole at one-sixth of sentence;
e. the NPB would make decisions with respect to full parole. The CSC would be responsible for supervision of released inmates, except where provinces are responsible under Exchange of Services Agreements;
f. national standards for parole supervision, including the grounds for suspension and revocation;
g. provision for provinces to establish separate provincial parole boards with full authority over conditional release of provincial inmates;
h. procedural safeguards for inmates and parolees; and
i. provision for provincial parole boards to assume responsibility for parole of inmates held in federal institutions in their provinces under standards established by federal legislation, at a cost to be negotiated with the federal government. This might take one of four forms as described herewith.

"Provincialization" of the Parole System

The National Parole Board could be completely "provincialized". The federal government could assist the seven provinces and two territories that do not have separate parole boards to establish individual boards which would then be responsible for full parole (actual supervision could be contracted to the respective provincial government community corrections department) for both federal and provincial inmates within those provinces and territories. Quebec, Ontario and British Columbia, which already have provincial parole boards, could assume responsibility for the parole and supervision of federal inmates in those provinces. The federal government could pay a fee per decision for federal inmates paroled by provincial authorities. This model could work effectively, whether or not provincial officials accepted responsibility for operating the federal institutions within their respective jurisdictions.

Based on the NPB budget for 1985/86, about 255 person-years and $13 million would be recovered each year under this alternative (total NPB budget less 57.5 person-years and $2.1 million for the Pardon program). This saving would be more than adequate to cover the costs per decision of provincial board decisions for federal inmates. The estimated cost per annum would be about $2.4 million, at $200 per decision, based on NPB statistics. The net annual savings therefore would be about 255 person-years and about $8 million.

The positive results of this alternative would include:

a. a substantial reduction in costs for the federal government;
b. rationalization of the parole system by abolishing duplication and overlap in this area;
c. elimination of an area of friction between the federal and provincial governments;
d. removal of an area of decision-making where the media and the public on certain occasions are extremely critical of the federal government;
e. quicker decisions for inmates, made by members of local parole boards; and
f. maintenance of small, local, efficient, cost-effective parole authorities, rather than the enlarged NPB proposed under Bill C-68 to deal with

the expected charter requirement that provincial inmates must be granted hearings by the NPB, which is not presently the case.

The negative results of this alternative could include the loss of 255 federal jobs and possible extended federal/ provincial negotiations to resolve issues.

Federalization of the Parole System

The federal government, with provincial agreement, could take responsibility for parole decision-making for all inmates, federal or provincial. Quebec, Ontario and British Columbia could abolish existing provincial parole boards.

The positive consequences of this alternative would include:

a. possible maintenance of a "national standard" of parole decision-making as opposed to possible variations among 10 provincial and two territorial paroling authorities (N.B. This assumption is not generally accepted by federal or provincial officials.);
b. duplication and overlap could be eliminated;
c. continuance of 255 federal jobs;
d. reduction of about $5 million in provincial costs (Quebec, Ontario and B.C.); and
e. an area of conflict between federal and provincial governments would be eliminated.

The negative consequences of this alternative would include:

a. an increase of about $5 million in annual costs to the federal government (provincial parole budgets);
b. some increase in the number of individuals (approximately 150) making federal parole decisions; and
c. possibly protracted federal-provincial negotiations over jurisdiction, given that provincial officials generally would prefer that the federal government withdraw rather than expand.

Federalization of the Parole System based on a Provincial/Local Board Presence

This consists primarily of the previous option, with the use of local parole boards serving each institution or cluster of institutions. The boards would be composed primarily of local citizens familiar with the justice or social welfare systems and a presiding officer from the National Parole Board.

The positive consequences of this alternative would include:

a. possible maintenance of a "national standard" of parole decision-making as opposed to possible variations among 10 provincial and 2 territorial paroling authorities (N.B. This assumption is not generally accepted by federal or provincial officials.);
b. duplication and overlap could be eliminated;
c. continuance of approximately 250 federal jobs at national headquarters;
d. an area of conflict between federal and provincial governments could be eliminated; and
e. local expertise could be utilized thereby providing more cost-efficient, community-based input into the decision-making process.

The negative consequences of this alternative would include:

a. an increase of about $5 million in annual costs to the federal government; and
b. possibly protracted federal/provincial negotiations over jurisdiction, given that provincial officials generally would prefer that the federal government withdraw rather than expand.

Administration by Prison Staff Members

Parole could be administered by prison staff members, under the same regulations as parole is now administered by the NPB. This would bring parole closer to the community level and would be faster, cheaper and more efficient. The NPB could be dismantled, at a savings of 255 person-years and $13 million. The shortcoming of this alternative is that institutional staff might be perceived in some quarters as being too close to the inmate to make dispassionate decisions.

TEMPORARY ESCORTED OR UNESCORTED OCCASIONAL RELEASE

National Parole Board

OBJECTIVES

Temporary Absence (TA) is a form of short-term release, usually not longer than three days, which may be granted for medical, humanitarian (family illness, funerals, divorce court, community service, recreational, cultural activities, etc.) or administrative reasons. Inmates are eligible for Escorted TA any time after the commencement of sentence. Generally, inmates are eligible for Unescorted TA after completing one-sixth of sentence, or at any time for emergency medical treatment.

AUTHORITY

Parole Act
Penitentiary Act
Prisons and Reformatories Act

DAY PAROLE

National Parole Board

OBJECTIVES

Day parole is a form of conditional release between total incarceration and full conditional release, designed to help inmates reintegrate into society. It allows selected offenders specified periods of supervised release under conditions and controls which can be gradually reduced commensurate with the acceptability of the individual's behaviour and the protection of the public.

An individual to whom it is granted must return to prison regularly or at the end of a specified duration. Such releases may be granted: (a) prior to eligibility for full release; (b) after eligibility and instead of full release if the board thinks that the more controlled conditions are preferable; or (c) when inmates denied full parole are approaching release on mandatory supervision by law, if it is believed that gradual release will improve the probability of successful completion of the mandatory supervision period.

By allowing for testing in the community and immediate return to incarceration when warranted, the restrictive nature of the program offers more protection to the public than would release without controls at warrant expiry.

FULL PAROLE
National Parole Board

OBJECTIVES

Full parole allows for the early, conditional release of an offender if the paroling authority is satisfied that:

a. the prisoner has received the maximum benefit from imprisonment;
b. the reform and rehabilitation of the prisoner will be aided by the grant of parole; and
c. the release of the offender on parole would not constitute an undue risk to society.

In general, inmates serving definite sentences (i.e. not a life-sentence, preventive detention, or an indeterminate sentence) are eligible for review for full parole after serving one-third of their sentence or seven years, whichever is less. There are exceptions, such as inmates with a record of violent conduct.

AUTHORITY

Parole Act

MANDATORY SUPERVISION
National Parole Board

OBJECTIVES

The purpose of this program is to require inmates who do not receive parole to serve their accumulated remission credits under supervision in the community after release until expiry of the original warrant of committal, in the expectation that supervision will assist the offender to reintegrate more successfully into society than would be the case if he or she were simply released at warrant expiry. It also allows for the return of the inmate to custody if the conditions of release are violated. Inmates are entitled by law to this form of release which ususally occurs at the two-thirds point in their sentence.

AUTHORITY

The Parole Act
The Penitentiary Act

PARDON: FEDERAL OFFENCES
National Parole Board

OBJECTIVES

To assist people who have been found guilty of a criminal offence and who, having satisfied the sentence imposed, have subsequently shown that they are law-abiding citizens.

AUTHORITY

The Criminal Records Act
Criminal Code
Letters Patent

DESCRIPTION

The Criminal Records Act confers upon the National Parole Board the responsibility to administer applications for the grant of Pardon. Upon receipt of an application for pardon and after determining that the individual has satisfied both the sentence imposed and the compulsory waiting period prior to eligibility, the board usually refers applications to the Royal Canadian Mounted Police to initiate community investigations. The board analyses the results of these investigations together with other relevant information and formulates a recommendation for the consideration of the Solicitor General who refers it to the Governor-in-Council for final decision. The granting of a pardon is recognition that the individual, having remained free of further convictions, deserves to be free of the stigmatizing effects of a criminal record.

The Royal Prerogative of Mercy, on the other hand is the power vested in the Governor General by the Letters Patent constituting the Office of the Governor General to exercise executive clemency. The power pertains to offences against federal laws exclusively. The Parole Act requires that the National Parole Board, upon direction by the Solicitor General, initiate investigations or inquiries with respect to any request made for the exercise of the Royal Prerogative of Mercy.

The Royal Prerogative of Mercy is exercised on the advice of the Solicitor General or another cabinet minister. The measures of clemency afforded by the Royal Prerogative of Mercy include free pardons and conditional pardons, and the remittance of fines, penalties or forfeitures imposed. The exercise of the Royal Prerogative of Mercy is intended to be invoked in exceptional circumstances only when no other remedy exists in law or when available remedies would either result in more hardship or would not afford the appropriate measure of relief.

In 1983/84, the National Parole Board made recommendations with respect to the grant of a Pardon or the exercise of the Royal Prerogative of Mercy for 8,313 individuals. Twenty-two applications were received for the Royal Prerogative of Mercy.

BENEFICIARIES

Major recipients of the benefits of the Clemency program are those individuals who are directly granted a pardon or are the recipients of a remedy under the exercise of the Royal Prerogative of Mercy. The relief to persons who have been wrongfully convicted and the reduction or elimination of the burden of a criminal record are significant benefits of the Clemency program.

EXPENDITURES ($000)

	84/85	PYs
NPB	2,357	57.5
RCMP*	1,200	33.5
TOTAL	3,557	91.0

* RCMP officials think that this may underestimate person-year usage. The method of gathering these data is under review.

OBSERVATIONS

Following a review of clemency powers by the Solicitor General, certain shortcomings of the Criminal Records Act were identified:

a. the requirement for an application and investigation of good behaviour in every case is administratively expensive and gives rise to undue delays in the granting of pardons. Furthermore, inquiries made on behalf of the Parole Board by the RCMP can give rise to embarrassment on the part of the applicant;

b. the relief provided by a pardon is inadequate to remedy the ongoing disabilities associated with a criminal conviction since the existence of the pardoned conviction cannot be denied;

c. the prohibition on the disclosure of the federal records of pardoned convictions impedes criminal investigations and prosecutions, while leaving disclosure of records kept by other agencies largely unregulated;

d. no provisions exist for the destruction of dated criminal records, whether pardoned or not. Destruction policy is determined by RCMP administrative directives;

e. no provisions exist for the removal from RCMP central files of fingerprints and photographs of persons charged with, but not convicted of indictable offences; and

f. the broad grounds for revocation of pardon under the current legislation gives rise to an onerous administrative burden in processing requests for revocation, as well as difficulties in structuring the discretion inherent in determining that an offender is no longer of "good behavior".

As a result of the limitations of the current legislation, only a small proportion of persons eligible for pardons have applied under the Act.

ASSESSMENT

The existing method is slow (an average of 13 months per application processed); costly (91 person-years); cumbersome (requires a decision by the Governor-in-Council); and counterproductive (after the RCMP completes the necessary community assessment, employers, neighbors and relatives have knowledge that the applicant has a criminal record).

There is general agreement among the federal and provincial governments and the private sector that costs should be reduced and that service to the public should be improved to the degree that these objectives can be attained without bringing the administration of justice into disrepute or destroying (as opposed to sealing) the records of certain serious offenders.

OPTIONS

The study team recommends to the Task Force that the government consider the following:

The presumptive "Sealed Record" model described herein, as proposed by the clemency review team in 1985 and the draft legislation prepared pursuant to that proposal, appears to provide an efficient and cost-effective method of revising the existing regulations and procedures for processing applications for pardon. The shift to a records management scheme should result in the benefits being conferred on a much larger class of individuals, as well as in significant administrative and investigative savings.

Eligibility: The model legislation would apply to all offences under federal legislation, other than ones for which a life or indeterminate sentence was imposed. If it were believed that the benefits of the Act should not apply to more serious offences without proof of good behaviour over and above the passage of a crime-free period, specified offences could either be excluded from the application of the Act or be made subject to a requirement of general good behaviour, which could be determined by the National Parole Board or by judicial decision.

There appears to be a consensus that the only effective way of relieving ex-offenders from the ongoing social and economic disabilities associated with a criminal record is to permit the ex-offender to deny the conviction. This can be accomplished in a number of ways, including:

a. deeming the finding of guilt and conviction not to have occurred - June 1983 proposals;

b. deeming the offence not to have been committed - Section 45, Young Offenders Act;

c. stipulating that the ex-offender is entitled to deny the existence of the conviction;

d. deeming a criminal record not to exist (this would seem worthy of serious consideration, since this form of question is common to many employment questionnaires);

e. the model legislation, unlike the present system, would make records of spent convictions accessible to law enforcement authorities; however, there would be a penalty for unauthorized disclosure of such records; (this approach has been criticized as a weakening of the relief afforded by the Criminal Records Act); and

f. it is also necessary to decide whether the record destruction provision should be included in the statute, in regulations under the Act, or determined by RCMP administrative guidelines.

Role of the National Parole Board: This would be determined largely by the decision made as to the requirement for general good behaviour. Should such a requirement not be included in the new act, a subsidiary role might be the verification of the crime-free eligibility periods. It would appear, however, that this function could be more efficiently performed by the RCMP, which has custody of the relevant records.

Certificate: Should good behaviour be required, a certificate identifying the inquiries made would retain a purpose. If not, some form of documentation confirming the eligible ex-offender's right to deny convictions for which relief is obtained might be desirable.

It is worth noting that the model legislation provides that offences for which a greater sentence may be imposed by reason of the existence of a prior conviction would not be spent until five years had elapsed after the expiry of the sentence imposed. This would apply primarily to impaired driving offences, for which increased penalties are sought, depending on the practice in different provinces and in the case of recidivism within five years of the original offence.

Cost-Effective Management of Offender Records: The RCMP should be responsible for the program. Criminal records in the Canadian Police Information Centre (CPIC) could be removed automatically as they expired, subject to necessary records and community reviews. It is estimated that 57.5 person-years and $2.4 million would be saved annually if responsibility were removed from the NPB and lodged with the RCMP. Other savings would be realized if a form letter to inform the individual ex-offender were sent, rather than an ornate certificate as is presently the case. CPIC should identify the existence of a sealed record, subject to the above.

If the status quo is maintained, the NPB should be authorized to obtain a CPIC terminal to speed up the process.

This program is not one that should be privatized or provincialized.

FEDERAL PAROLE - COMMUNITY SUPERVISION
National Parole Board

OBJECTIVES

To assist in the reintegration of the offender with the community through a balanced program of community supervision incorporating the need to protect the public, the desire to promote law abiding behaviour, the reduction in the "dollar" and "human" cost of unnecessary incarceration and the reinforcement of the social control/social contract precepts underlying the administration of justice.

AUTHORITY

Penitentiary Act, Section 4.1

DESCRIPTION

The National Parole Board does not have jurisdiction with regard to community supervision of offenders released by it. Pursuant to Section 4.1 of the Penitentiary Act, the federal Commissioner of the Correctional Service of Canada has control and management of the National Parole Service (Community) and is responsible for the supervision of offenders (federal & provincial) to whom parole (day & full) or temporary absence has been granted or who have been released on mandatory supervision pursuant to the Parole Act.

BENEFICIARIES

Major recipients of the benefits of parole/community supervision are those offenders (federal & provincial) granted parole or temporary absence or released on mandatory supervision.

The family of the offender and the taxpayer benefit as it is anticipated employment upon release will eliminate the need for welfare assistance facing many families during incarceration of the offender.

The community at large benefits from gradual release mechanisms as societal reintegration can be approached through the control/assistance process of supervision.

EXPENDITURES

	84/85
Costs:	
To Private Sector	$13,778,365
CSC Staffing & Overhead	$30,709,213
TOTAL	$44,487,578
CSC PYs	807

Of the $30,709,213 dedicated to the actual CSC National Parole Service activities throughout Canada, the appropriate allocation between federal and provincial offenders (case preparation and case supervision) is as follows:

	Provincial Case Preparation	**Provincial Case Supervision**	**Federal Case Preparation**	**Federal Case Supervision**
National Figures	8%	8%	33%	51%
	$2.5M	$2.4M	$9.9M	$15.8M

Note: The figures above are approximate and relate to the field operations of CSC - National Parole Service throughout Canada and do not account for regional or national headquarters person-years or dollars.

OBSERVATIONS

Community supervision, necessary due to release under the Parole Act, is believed to provide a significantly greater protection to the public than release without supervision.

Consistent with that belief is the acknowledged position that positive change may occur progressively with the offender, following a period of incarceration, through imposed and enforced conditions of conditional release.

Although there is consensus among federal, provincial and private sector corrections personnel as to the benefits of the community-supervision aspect of conditional release, there is growing interest in the rational ordering of resources associated with an integration model of federal/provincial community corrections.

The CSC's National Parole Service is providing case preparation and case supervision services to the provinces at an expense.

OPTIONS

The study team recommend to the Task Force that the government consider the following:

1. Maintain the status quo.

   The cost associated with maintaining the existing model of federal community supervision is as described on the preceeding page. The positive results could include:

   - no loss of federal jobs;
   - control of the majority of direct supervision thereby having internal management of the quality of supervision; and
   - no expenditure of time and/or resources associated with federal/provincial negotiations, pertinent to an integrated model of community corrections.

   The negative results could include:

   - possible alienation of those provincial corrections systems favourable to an integrated model of community corrections; and
   - continual duplication and overlap between the federal and provincial community corrections systems.

2. Cost recovery from provinces.

   The costs associated with case preparation and case supervision of provincial inmates released by the National Parole Board could be recovered. The positive results could include federal cost restriction due to the influx of provincial revenue; and no loss of federal jobs.

   The negative results could include hostility from the province as parole is considered a federal authority and therefore, a federal expense.

3. Federalization of all Community Supervision (Probation and Parole)

The federal parole network could be expanded to take provincial probation supervision under its administrative umbrella, thereby creating a unified community corrections system.

The positive results could include:

a. creation of a "national standard" of community supervision;
b. duplication and overlap could be eliminated;
c. continuance of federal jobs; and
d. an area of conflict between federal and provincial governments would be eliminated.

The negative consequences could include:

a. a considerable increase in annual costs to the federal government;
b. the complexity of establishing and monitoring a "national standard" of community supervision would require a substantial federal effort involving person years and resources increase; and
c. protracted federal/provincial negotiations as provincial officials would prefer federal withdrawal.

Note: It is felt that "Privatization" of community supervision (non-profit and for-profit) is premature, requiring a rationalization of resource allocation between the federal/provincial community corrections systems before adding the complexity of an expanded role for the voluntary sector and the further complexity of the "Private Enterprise" initiative.

4. "Provincialization" of Federal Community Supervision

The community supervision of federal conditional release could be completely "provincialized". By utilizing the existing administrative umbrella of the interested provincial community corrections systems, an integrated model of community corrections (federal and provincial) could maximize efficiency and effectiveness of taxpayers' dollars directed to this particular aspect of correctional activity.

The positive results could include:

- a. a reduction in the number of federal employees;
- b. rationalization of federal/provincial resources paralleling service supply in other social welfare areas such as social services, education and hospitals;
- c. possible federal cost avoidance due to "provincialization" of the administrative element of federal community supervision;
- d. creation of a more harmonious federal/provincial environment based on cooperative federalism in the area of service supply; and
- e. possible cost "avoidance" for federal corrections.

The negative results could include:

- a. a reduction in the number of federal employees with attendant union reaction;
- b. possible extended federal/provincial negotiations to resolve issues; and
- c. sub-contracting-out an area of responsibility for which the Federal Solicitor General is accountable.

5. "Provincialization" of all Federal Community Supervision

The potential for federal cost "avoidance" in conjunction with a more rational ordering of resources (federal and provincial) makes the integrated model of community supervision the most attractive alternative at hand. Through contractual arrangement with interested provinces, the Correctional Service of Canada could arrange for the community supervision of existing federal clients requiring such service.

This arrangement is essentially in place in most provinces across Canada. What is being proposed is that the primary and sole responsibility for federal community supervision be assumed by the various provincial community corrections systems which are currently serving in a secondary or "minor shareholder" capacity.

In essence, this would expand the existing "sharing" model of supervision for federal cases to allow the provincial governments to become the sole service supplier (in conjunction with private sector organizations).

Case preparation and supervision for provincial offenders as well as supervision of federal offenders could be assumed by the respective provincial community corrections systems. However, case preparation for federal cases should remain with CSC as this has direct implicationsfor federal parole hearings.

There is a potential for an approximate 50-per-cent reduction in the 807 federal person-years for CSC - National Parole Service if the provinces agree to take over provincial case preparation and supervision as well as federal case supervision. Federal 'cost avoidance' is impossible to determine until a province-by-province contractual arrangement materializes.

LAW ENFORCEMENT
OVERVIEW

In the view of the study team, the major law enforcement issue confronting the federal government is the future role and responsibilities of the RCMP. During the period of rapid growth in police personnel and expenditures, the RCMP became increasingly a police service under contract to the provinces and over 190 municipalities. With restraint, federal policing priorities suffered because of contract commitments which now constitute over 50 per cent of RCMP human and fiscal expenditures.

In part because of the relatively low priority given to federal responsibilities by the RCMP, other federal departments, agencies and crown corporations created their own policing capacity - sixteen departments employing over 13,000 investigators at about $500 million annually. The study team believes proliferation of federal enforcement units has created inefficiencies in resource allocation and information sharing, overlap and some duplication of activities, inappropriately assigned police powers (which may be raised in Charter issues) and, in some areas, little or ineffective enforcement and lost revenue. In addition, there is overlap and duplication with a number of provincial enforcement agencies.

The RCMP has come under increasing pressure to attach higher priority to its federal responsibilities, to enhance its protective service capacity, to assist federal departments in investigations likely to lead to criminal prosecution and to take a lead role in criminal intelligence and enforcement of commercial crime, organized crime and particularly drug enforcement.

There remains, however, some degree of ambiguity and dissent about precisely what are the federal responsibilities for law enforcement. Two current projects which will be bringing recommendations to Cabinet -- Federal Law Enforcement Under Review (Solicitor General Canada) and the Federal Compliance Project (Department of Justice) -- should provide the base (along with the CSIS Act, Part IV) for the rationalization of federal enforcement of federal statutes.

Nevertheless, in the view of the study team, neither project goes far enough. A formal definition of federal and RCMP responsibilities will also require an examination of those criminal code offences which demand a national response, and of the federal government's role in providing national police services and promoting national standards of policing. The Solicitor General Canada and the Department of Justice should, in the view of the study team, jointly develop (in consultation with other relevant federal departments) the federal position on the definition of a federal offence, federal enforcement responsibilities and the future role of the RCMP in federal enforcement.

Furthermore, the enhancement of the federal role and responsibilities of the RCMP will require a fundamental review of its current organization and procedures. For example, the greater need for specialized enforcement knowledge and skills would require changes in RCMP training and consideration of such options (not now employed), as lateral entry into senior positions. The review of federal responsibilities should, the study team believes, include, a review of the organizational and policy implications for the RCMP.

The timeframe for such a project is very much determined by the federal/provincial contract negotiations. While some provinces (Newfoundland and New Brunswick) have already cut down on RCMP contract services, most provinces will not be ready to discontinue contract arrangements by 1991 (termination date of the current contracts), despite their concerns about their ability to establish priorities for the RCMP and hold it accountable. (Bill C-65 might alleviate some concerns.) At the same time, many within the police community and some provincial officials have come to question whether a national force is the most effective or efficient means of providing municipal police services, or should they be community-based and under local authority. The federal government could announce its intention of withdrawing from contract services with municipalities of over 15,000 population by 1991, and renegotiate the 1991 provincial contracts with the view that after 2001, contract services would be offered only under exceptional circumstances. Withdrawal from contract services should, the study team suggests, only occur on the basis of a clear, formal federal role for the RCMP.

The federal government could also define a core of national police services, (technical assistance, information bases, training, intelligence) that would fall within federal responsibility (and costs) to assist in ensuring effective and efficient policing across Canada. The basis for this core of services already exists through Canadian Police Services offered by the RCMP and the law enforcement research and development program of the Solicitor General.

There are, however, in the study team's view, some major gaps. Perhaps the most important example is the development of information technology for policing. Such systems have great potential for improving police planning, decision-making and accountability. For these reasons, most major police forces are now developing some form of police management information system. The RCMP has spent millions of dollars developing its system (PIRS) independent of these other efforts. Some police departments have asked for RCMP assistance and the RCMP plans to respond on the basis of full cost-recovery. Other police departments have looked to the Solicitor General for assistance, and yet others to the Canadian Centre for Justice Statistics. Not only is this duplication expensive, it inhibits inter-police communication and the creation of national data. Recognizing the inefficiencies of such an approach, the Canadian Association of Chiefs of Police has called upon the federal government to develop a coordinated response. The Solicitor General, in consultation with the Canadian Centre and the RCMP, could develop such a mechanism for providing assistance and coordination in information system development.

The study team also made a number of specific proposals to reduce program inefficiencies and to make greater use of private contract services where special RCMP security needs allow.

CANADIAN POLICE INFORMATION CENTRE
Royal Canadian Mounted Police

OBJECTIVES

To assist all accredited police departments by providing access to an automated national criminal information system.

AUTHORITY

TB Minute 670388, 16 Aug. 1967;
TB Minute 690706, 24 July 1969.

DESCRIPTION

The CPIC system is a repository of crime-related information which is available to police agencies from coast to coast. Canadian agencies store data in the repository and retrieve it as required through the use of on-line computer terminals. The government of Canada bears all costs. Currently, about 1,360 terminals in police stations across Canada are used to access some three million records on seven files. These files contain data on Motor Vehicles, Property, Boats and Motors, Persons, Criminal Synopsis, Criminal Name Index and Dental Characteristics. The CPIC system is operational 24 hours a day on a dedicated computer. To ensure a minimum delay in the event of hardware failure, a duplicate system was acquired as a back-up.

The Canadian Police Information Centre is an outgrowth of meetings between the Federal Attorney General and Provincial Attornies General in 1966. These meetings were concerned with identifying means of assisting the police community in combatting organized crime. The CPIC system was approved by Treasury Board in 1967 as a computerized information system for law enforcement use to provide all Canadian law enforcement agencies with information on crimes and criminals. As a Canadian Police Service it is offered at no cost (since 1971).

An Advisory Committee of 26 senior police officers from municipal police forces, provincial police forces, the Ontario Police Commission, and the RCMP (representing the Attornies General of the provinces under RCMP contract) govern the CPIC system. The Advisory Committee is the policy-making authority for the CPIC system and is responsible for establishing the scope and content of the data files, how the system is used and regulated and which agencies are eligible to use the system.

The Advisory Committee was created in 1969, three years prior to the release of the first application by CPIC. It has played an important and continuing role in the development and control of CPIC. The committee meets once a year to deal with matters related to the CPIC system.

BENEFICIARIES

All accredited police forces; other federal and provincial departments indirectly through the RCMP.

EXPENDITURES ($000)

	83/84 Expenditures	**84/85 Main Estimates**
Salaries and Wages	7,804	8,258
Other O&M	11,574	15,215
Grants/Contributions	-	-
Capital	1,988	1,498
TOTAL	21,366	24,971
Revenues	-	-
PYs	266	267

These figures are only approximate as it is impossible to accurately separate the CPIC costs from other RCMP informatics costs.

OBSERVATIONS

The conditions which prompted the initiation of these services remain today. These services promote national police cooperation, enhance the level of service to all areas of Canada and provide a national criminal information system essential to efficient law enforcement in Canada. As well, the safety of all policemen is enhanced by the rapid communication of criminal information. CPIC has become an essential aspect of policing in Canada as evidenced by widespread and increasing use made of the system by police across the country.

Initially, CPIC was partially cost-shared. The contract provinces and municipalities were required to pay a portion of the line and terminal expenses associated with CPIC; Ontario and Quebec were required to share on a 50/50 basis for five years after which they would share on the same basis as the contract provinces. In fact, Quebec developed its own system and was thus charged only a monthly rate for the CPIC "link up". In the renegotiations of the last contracts, the federal government agreed to provide the service at no cost to the contract provinces and municipalities, after which Treasury Board approved discontinuance of cost-sharing with Ontario and Quebec. The cost-sharing arrangement had allowed the RCMP to recover about 10 per cent of the total CPIC costs.

The RCMP's position on CPIC cost-sharing is that it has in the past produced inter-provincial inequities and some conflict in the police community. They argue that the provision of CPIC at no cost contributes to inter-police relations and to national unity more generally.

A number of departments and agencies, particulary the agencies of the Solicitor General, depend on CPIC information. Currently, however, they must make CPIC requests through the RCMP, one request at a time, because CPIC policy restricts direct access to accredited police forces. This has created inefficiencies for the outside agencies and additional burden on the RCMP in responding to requests and producing hard copy. The RCMP and the Advisory Committee have adopted this policy because of concerns about maintaining tight control over the data, to protect the information from misuse and abuse.

The Federal Compliance Project of Justice Canada is proposing that the RCMP provide full information about the types of data on regulatory infractions now carried on CPIC. Ultimately, this information could be removed to a separate data bank.

ASSESSMENT

CPIC has become an integral component of Canadian policing. It is well used and extremely valued by the police community and by a number of other departments and agencies.

Limited cost-recovery, for terminals and lines, had been in effect prior to the negotiation of the 1981 contracts. In the view of the study team, the issue might well be included in the next round of negotiations.

The study team believes that while a number of agencies currently have access to CPIC through the RCMP, the lack of direct access creates inefficiencies for these agencies and the RCMP as well.

OPTIONS

The system is currently well run and the RCMP has planned some technological improvements (network integration) which will make the Informatics Section even more efficient. Nevertheless, a number of problems would remain unresolved.

The study team recommends to the Task Force that the government consider the following:

1. Include the costs of terminals and lines in the next round of contract negotiations.

2. Develop mechanisms which provide legitimate users direct "link-up" to CPIC and which protect the integrity of CPIC.

3. The RCMP should provide full information on the types of data maintained in CPIC on regulatory offences to further the work of the Federal Compliance Project.

CANADIAN POLICE COLLEGE
Royal Canadian Mounted Police

OBJECTIVES

To assist in the development of the law enforcement profession by providing, upon request, police training in management and specialized areas, to senior personnel of all Canadian police agencies, some other government agencies and foreign police departments.

The college's overall objective is to contribute to improved individual and organizational effectiveness within Canadian federal, provincial and municipal law enforcement agencies.

AUTHORITY

Treasury Board Minute 720381, July, 1973.

DESCRIPTION

The Canadian Police College is a federally funded national institution, providing advanced training in specialized investigative areas and in organizational and personnel management. The Canadian Police College Advisory Committee, with representatives of the appropriate provincial ministers and the Canadian Association of Chiefs of Police, provides ongoing advice on the training needs which can best be met by the college.

The current mandate for the college to provide training as a Canadian police service emerged from the 1966 Federal-Provincial Conference on Organized Crime. These services are available at no cost beyond a small per diem to cover food costs. To ensure equal access for all police agencies, the federal government pays the transportation costs of college candidates.

Courses are researched and developed in collaboration with, and often under contract to, police specialists. Courses are taught by a combination of college staff, contract instructors from universities, officials from other government departments, the courts and the military, experts from private industry and secondments from the RCMP and other police departments. In 1985, 120 courses are scheduled for 2200 police officers from across Canada and Commonwealth countries.

The college also provides related research information, educational and advisory services:

a. the Continuing Education Program encourages police personnel to pursue, on their own time, relevant courses offered by universities. The program issues diplomas and certificates upon the successful completion of each of three phases, each phase consisting of five full university courses;

b. the Law Enforcement Reference Centre provides a source of information and reference services to all RCMP, college staff and candidates; and

c. the research component focuses on course development and evaluation. The college publishes the findings of research and other papers on policing in the Canadian Police College Journal.

BENEFICIARIES

All accredited police agencies in Canada, Commonwealth and other foreign police agencies, and some federal departments.

EXPENDITURES ($000)

	83/84	84/85
Gross Expenditures	5,344	5,736
Revenues		
Net Expenditures	5,344	5,736
PYs	71	68

OBSERVATIONS

The growing awareness of the need for and importance of training for police has resulted in a dramatic expansion in training programs. During the past 10-12 years, five provincial academies were established to serve some of the training needs in eight provinces. The RCMP has a large training and development branch to serve its own needs for recruit and in-service training, and larger municipal forces, often in conjunction with community colleges, have also developed training programs. The Treasury Board assessment of the college concludes that its program is unique and complements these other programs. While overlap and duplication is apparently minimal, interviews with experts in police training revealed the concern that some college courses might better be delivered by provincial institutions, community colleges and universities while other courses not now delivered centrally might be more cost-effectively delivered by the college. The college has developed good working relations and resource-sharing with the Training and Development Branch of the RCMP, and has informal relations with other police training institutions. However, the directors of training at all levels of government have not made a collective attempt to rationalize the delivery of training services.

Similarly, training of federal inspectors and enforcement officers has become seriously fragmented, with some federal departments and agencies using RCMP facilities, some using the college, some using their own training facilities and some with little or no formal training in the area. Two studies, FLEUR and the Federal Compliance Project, have independently recommended that the Solicitor General, the RCMP, the Department of Justice and the Public Service Commission take the lead in rationalizing federal training and, by using existing resources, offer consistent training in federal inspection and enforcement.

Several provincial and municipal officials also indicated the potential cost-benefits of greater decentralization, using provincial facilities to deliver courses when feasible. The college is increasingly exercising this option when it is judged to be cost-effective. For example, specialized investigation courses have been offered in British Columbia. Similarly the college is giving greater emphasis to courses for police instructors who can then conduct local training at local expense, and is also examining areas in which individualized instruction and computer-based courses can be provided to police agencies for local training.

A planned reorganization of the division in which the college is located ("N" Division) would bring the college under the same division as the Training and Development Branch of the RCMP. This might provide an opportunity to examine the possibility of efficiencies through consolidation of services such as course evaluation. It should be emphasized that a number of the college's beneficiaries have expressed concern about preserving the "national" character of the college and avoiding undue influence by the RCMP in shaping the college.

Cost-recovery through course fees could reduce net expenditures by the federal government. The RCMP, however, has expressed the concern that some police forces would reduce, perhaps substantially, their use of the college thus reducing the overall effectiveness of Canadian law enforcement. The college currently cannot meet all legitimate training needs (about 23 per cent shortfall) and has tentatively planned some expansion to meet growing demands. While it is likely that course fees would reduce requests, it is impossible to estimate the magnitude of any such reduction in demand.

A number of experts within the police community raised some issues around the growing private police and security industry and the absence or inadequacy of provincial legislation in this area. College courses designed for private justice personnel, at full cost-recovery, might serve to contribute to the development of improved standards of private policing and security.

ASSESSMENT

Although an evaluation of the college is now underway, the results are not yet available. The study team expects the evaluation to confirm that the college is an extremely valuable and valued service which, according to provincial and municipal officials, contributes significantly to improving the effectiveness and efficiency of policing in Canada.

For the most part, the college appears to complement other training services. Nevertheless, much more could be done to rationalize the training resources and services of the college, the RCMP, the provincial institutes, municipal departments, community colleges and other federal departments and agencies. The college could, the study team believes, play a role in promoting the use of existing courses in community colleges and universities, particularly in the management area.

In the view of the study team, decentralization of course delivery holds great promise for reducing training costs. The college should continue its efforts to offer courses, wherever feasible, in provincial and local facilities, to train police instructors who can then offer courses locally, and to develop individualized instruction and computer-based courses which can be delivered locally.

Cost recovery through course fees and specialized courses for private justice personnel could help reduce federal expenditures, with some risk that legitimate use of the college by local police forces would be seriously reduced.

OPTIONS

The study team recommends to the Task Force that the government consider the following:

1. National Coordination and Resource Sharing

Invite all directors of police training at all levels of government and in community colleges to participate in the rationalization of training resources and services:

a. to ensure that courses are being provided by the most appropriate institution;
b. to develop shared training standards; and
c. to encourage sharing of resources and facilities where greater efficiencies might be achieved (with particular regard to sharing overhead costs such as evaluation with the RCMP, Training and Development Branch).

The development of standards would allow the college to recognize formally the completion of approved courses in other institutions, and, more generally, provide the basis for the more efficient use of existing resources.

2. Federal Coordination and Resource Sharing

Rationalize training at the federal level:

a. to use existing resources to provide consistent training in federal inspection and enforcement; and
b. to define minimum training standards.

3. Decentralization

Continue to develop decentralized approaches to service delivery, including an emphasis on training instructors.

4. Cost Recovery

Give consideration to introducing course fees, and to the possibility of designing courses for private justice personnel, on a cost-recovery basis.

RCMP EMPLOYEE INFORMATION
Royal Canadian Mounted Police

OBJECTIVES

To meet the information needs of personnel and administrative managers of the RCMP.

AUTHORITY

RCMP Act, Sections 5 and 21(2), Admin. Manual I.3., II.1.5 and II.5.

DESCRIPTION

The RCMP maintains information concerning employees (past and present), postings, service records and employment histories. An automated personnel management system called Personnel Administration Research and Development (PARADE) is used to maintain and provide information on all members of the RCMP and to a limited extent, public service employees. As well, overall establishment, classification and staffing information is included. The PARADE system provides administrative information to support the day-to-day activities of personnel management. It is also responsive to the evolving requirements of the management of the RCMP at headquarters and division levels. The PARADE system is decentralized to all divisions to the extent that many of the key entry and retrieval functions can be initiated on a regional basis. An internal requirements study recommending major enhancements to the current system, including public service personnel management information and analysis, is continuing, as are a variety of innovations to decentralize input and access to distribute the increased workload without increasing person-year strength.

BENEFICIARIES

The RCMP.

EXPENDITURES ($000)

	83/84 Expenditures	84/85 Main Estimates
Salaries and Wages	481	578
Other O&M	17	21
Grants/Contributions	-	-
Capital	-	-
TOTAL	498	599
Revenues	-	-
PYs	16	17

OBSERVATIONS

Given the centralized structure of staffing in the RCMP, a system such as PARADE is essential. The Employee Information System seems to be very efficient and effective in the view of the study team.

The system is used strictly for internal purposes and does not relate to the federal/provincial or public orientation of the Task Force review.

OPTIONS

The study team recommends to the Task Force that the government maintain the status quo.

FORENSIC LABORATORY SERVICES
Royal Canadian Mounted Police

OBJECTIVES

To assist, upon request, all Canadian law enforcement agencies and other government agencies by providing specialized forensic laboratory services.

AUTHORITY

RCMP Act, Sections 5 and 21(2); Admin. Manual, App. I-3-2, Section 5.4.

DESCRIPTION

The forensic laboratories are responsible for providing scientific and technical assistance in criminal matters to Canadian police agencies, other authorized agencies at the federal, provincial and municipal levels and the courts through eight forensic laboratories located across Canada in Vancouver, Edmonton, Regina, Winnipeg, Ottawa, Montreal, Sackville and Halifax. Examinations and analyses are conducted on exhibit material submitted from authorized agencies and expert opinions are provided as aids to investigation and as court evidence. This service is provided free-of-charge, as a Canadian police service.

Each laboratory, except Montreal, provides a wide range of forensic examinations of exhibit material using alcohol chemistry (except Winnipeg), documents examination, firearms and toolmark identification, hair and fibre identification, serology and toxicology. The Montreal facility provides a counterfeit examination service for currency and travel documents and a document examination section. The Central Bureau for Counterfeits is located in the Central Forensic Laboratory, Ottawa, and provides examination of suspected counterfeit currency, coin and travel documents and is a central repository for information on international counterfeit activity. The Central Bureau for Counterfeits also evaluates security documents for the Bank of Canada and other federal and provincial fepartments.

The Central Forensic Laboratory maintains a liaison with national and international "forensic institutions" in the conduct of research and development projects. The central laboratory also plays a role in the evaluation of police equipment for general use in law enforcement, e.g. breath-testing instrumentation (for alcohol).

Since 1979, the RCMP, through the Science and Technology Program Support Section, has managed the Program of Science and Technology in Support of Law Enforcement in consultation with the Operational Research Committee of the Canadian Association of Chiefs of Police and the National Research Council of Canada. As lead agency, the RCMP is responsible for the financing, contracting, accounting and monitoring of all projects initiated by this program which is undertaken to satisfy the research needs of the Canadian police community.

This program was evaluated in 1983 and the seven issues addressed led to a number of recommendations aimed at program improvement which are now being implemented.

BENEFICIARIES

All accredited police agencies in Canada (and other federal, provincial and municipal departments)

EXPENDITURES

	83/84	**84/85**
Gross expenditures	$17,192,000	$18,882,000
Revenues	-	-
Net expenditures	$17,192,000	$18,882,000
PYs	320	325

OBSERVATIONS

While Ontario and Quebec have developed high quality laboratory services, no equivalent services have been developed in the provinces under contract. The RCMP services, then, are very important to the law enforcement community and courts throughout Canada. The laboratories are very highly regarded by the provinces and the police community.

The RCMP offers these services at no cost to other police departments as a means of promoting a consistent, national standard in investigation and in the presentation of material evidence. In part this reflects a concern that some departments would be reluctant to use the services if there was a charge for service. On the other hand, cost-recovery would not only reduce net federal expenditures, it could have the added benefit of rationalizing the use of forensic services. There are no nationally accepted uniform criteria for the use of forensic services.

The forensic laboratory services were evaluated in 1983 and a number of recommendations aimed at program improvement have been implemented. One issue, however, has not been resolved. The evaluation indicated the possibility of overlap, particularly between the Sackville and Halifax labs. The Treasury Board Submission (1979) creating the Halifax lab indicated that its creation would likely mean closing the Sackville lab. Feasibility studies by RCMP have shown that the consolidation of the Sackville lab services within the Halifax lab was feasible, with minimal disruption to service, and with potentially considerable savings in capital costs, facilities management, equipment purchases and maintenance, and administrative overhead. The province of New Brunswick and the Sackville community would find such a move objectionable because of some expressed fears of deterioration in service and because of the importance of the Sackville lab to the local economy.

A similar argument could be made for the Montreal forensic laboratory, although it is extremely small (eight person-years) and offers only limited services. Nevertheless, the development of a strong provincial laboratory in Montreal and the proximity to Ottawa's central lab may make the Montreal lab redundant. (This view was expressed in interviews with personnel in the federal and provincial Montreal labs.) On the other hand, the lab gives added visibility to Canada's national force in a province where such visibility is otherwise low.

While the provincialization or privatization of the labs might be given consideration, few provinces could bear the start-up costs and continuing equipment costs as forensic technology advances. Furthermore, there exist no equivalent private forensic laboratories in Canada, nor any academic programs in forensic police services. In either case, the RCMP would require its own forensic services. The national program of forensic services has encouraged consistency and continuity in research, development and service and compares favourably to more fragmented "mixed" services as found in the United States. The forensic labs also now contract out for particular forensic science services (e.g. breathalyser work).

There is also a good deal of evidence of significant demand for such services from private organizations (e.g. insurance companies). A policy which opened the labs to such private users on a fee-for-service basis could help to reduce net federal expenditures. The RCMP has expressed the view that forensic services in large part serve the courts by providing material evidence of high scientific standards. The RCMP will service non-government clients only when involved in the court process and under the direction of the courts.

ASSESSMENT

In the view of the study team, the labs provide an essential and highly valued service to the police community and government departments. The RCMP has contributed to consistency in services at a national level and has contributed significantly to advances in forensic police science.

With the promotion of national standards in the use of forensic services in investigation and court evidence, attempts at cost-recovery would be less likely to lead to inappropriate reductions in the use of labs. Cost-recovery could also be introduced for private sector users. Any attempt at cost-recovery from accredited police departments at the same time as lab closures would no doubt produce extremely negative responses from the affected provinces.

OPTIONS

The study team recommends to the Task Force that the government consider the following:

1. Cost-recovery

   Open the labs to private sector users as feasible within existing resources, on a cost-recovery basis, and initiate discussions with the provinces on the introduction of a fee-for-service, on the basis of unit-cost billing or pro forma billing through which users are billed after an agreed level of service has been provided (i.e. an agreed level of free service is provided at no cost, after which billing commences). The RCMP has expressed concern that legitimate lab use would be inhibited. Other police departments currently account for between 20 per cent and 22 per cent of demand for service.

2. Cost Reduction

   Close the Sackville lab as a first step to regionalizing the labs. All of the western labs currently have heavy workloads and service would likely suffer by closing any one of these. However, the Sackville and Montreal labs could be closed, incorporating their work in the Halifax and Ottawa labs respectively. Both lab closures are feasible with minimal disruption in standard or quality of service. The savings realized by the closure of Sackville would be in the order of $1 million annually, (estimate) but would be negligible from the closure of the Montreal lab, which is small and is located within the federal detachment. The RCMP should begin by closing the Sackville lab.

3. Provincialization

Provincial control of the labs would require initial and ongoing expenditures which few provinces would currently wish to take on, and training and research and development needs which few could meet. Provincialization might also mean uneven forensic services which could in turn have negative consequences on the prosecution of cases in some jurisdictions. The RCMP would also require lab services to meet its federal responsibilities. Provincialization would most likely have to be phased in over the long term.

4. Privatization

The facilities and expertise for the provision of police-specific forensic services are not widely available in Canada outside of the police community. In the U.S.,private forensic labs do exist but play a minimal role in the provision of services to the police. Continuity and consistency in services might be jeopardized, as would communication between police and forensic experts.

FEDERAL LAW ENFORCEMENT
Royal Canadian Mounted Police

OBJECTIVES

To prevent and detect offences against Federal Statutes and Executive Orders, to maintain national security and to provide investigative and protective services to other federal departments and agencies.

AUTHORITY

RCMP Act 1959, C. 45, S. 1
Federal/Provincial Agreement Relating to Financial Disclosure and Securities Regulation (Cab. Doc. 612/66, 66 11/02)
Agreements and Memoranda of Understanding with (17) Federal Departments, Agencies and Crown Corporations
CSIS Act, Part 4
Federal Statutes

DESCRIPTION

The RCMP not only enforces the Criminal Code, provincial statutes and municipal by-laws (under contractual agreements), but also has about 70 formal or informal agreements with federal departments, agencies and Crown corporations for the enforcement of federal statutes. Following the 1966 federal/provincial conference on Financial Disclosure and Securities Regulation and Organized Crime, the RCMP's mandate was extended in the domain of white collar and organized crime. At the same time, a number of federally-funded police services were extended to all accredited police forces in Canada. The CSIS Act, Part 4, (Federal Offences Act) assigned primary enforcement responsibility to the RCMP in relation to the investigation and prevention of national security offences and crimes committed in connection with internationally protected persons. Canada is obligated under treaty to protect foreign diplomats and missions. By executive order, protection is accorded other VIPs. By law and executive order, the RCMP has the responsibility to protect the property, information and institutions of Canada against crime. Protective services associated with foreign diplomats and missions involve a combination of electronic systems, patrol systems, contracted static guard services and RCMP bodyguards and escorts.

While the provinces undertake prosecution under the Criminal Code, Parliament has also created offences through about 300 federal statutes which, because of their national scope, are enforced by the federal government. Responsibility for federal law enforcement has become increasingly dispersed among about 48 federal departments, agencies and Crown corporations. Of these, 16 departments have enforcement functions which go beyond routine monitoring and inspection to include the investigation of suspected offences that could lead to criminal prosecution. These 16 departments employ about 13,000 persons, at a cost of roughly $500 million dollars each year (excluding the RCMP and the Correctional Service of Canada).

The federal law enforcement system has been the subject of investigation for a number of years. In 1974, Cabinet directed the Solicitor General of the day to examine the role of the federal government in law enforcement. Two studies, Hickling-Johnston (1975) and Drummie (1978) detailed a number of administrative and operational problems in federal law enforcement. The Marin Commission and the McDonald Commission provided additional evidence of the problems.

In response to the findings of these studies, the Police and Security Branch of the Secretariat of the ministry of the Solicitor General prepared a Memorandum to Cabinet for a full review of Federal Law Enforcement (FLEUR), approved in 1984 and due to be completed in December 1985. The terms of reference of FLEUR mirror those of the Task Force on Program Review. The review is overseen by a Steering Committee at the assistant deputy minister level and representing the Solicitor General, the RCMP, the Department of Justice, the Privy Council Office and the Treasury Board Secretariat.

A complementary study in the Department of Justice -- the Federal Statutes Compliance Project -- is examining the full range of responses to non-compliance to the federal statutes. This project will also be producing a Memorandum to Cabinet in December.

BENEFICIARIES

Citizens of Canada, other federal government departments, international police agencies.

EXPENDITURES ($000)

	83/84	84/85
Gross Expenditures	336,910	276,953
Revenues	28,106	29,608
Net Expenditures	308,804	247,345
PYs	6,707	6,786

These figures include CSIS.

OBSERVATIONS

The RCMP has had to confront an increasingly ambiguous environment, in part because of the expanded role of other federal departments and agencies in law enforcement and because of the lack of formal definition and national consensus on the definition of federal offences and, therefore, of federal law enforcement. Because of this, the RCMP has been extremely supportive of the FLEUR exercise and has urged a fundamental review of the Criminal Code with a view to defining "federal offences" and "federal law enforcement powers".

FLEUR and earlier studies and commissions have identified a number of serious problems in the organization of federal law enforcement:

a. Fragmentation: Despite the central role of the RCMP and its increasing emphasis on federal law enforcement, there appears to be fragmentation of federal law enforcement among the various federal departments and agencies. The RCMP emphasis on contract services and on meeting provincial needs has inhibited its ability to expand its federal enforcement activities to meet its federal responsibilities. This creates difficulties for the coordination of enforcement activities and for the communication- and information-sharing necessary for efficient and effective enforcement.

b. Overlap and Duplication: The proliferation of units with federal law enforcement responsibilities inevitably creates greater potential for overlap and duplication. Confusion and disputes about jurisdiction and mandate and the different objectives and enforcement strategies among the various departments have inhibited easy resolution of these problems.

c. Peace Officer Powers: There appear to be some problems regarding the use of Section 2 of the Criminal Code for granting of police officer powers and the extent to which the powers granted are appropriate to varying enforcement responsibilities, training and skills. Despite the increasing number of units with police-like functions, there are no consistent standards or mechanisms of reporting, training and, most important, accountability.

As part of the response to the Canadian Security and Intelligence Service Bill, the Department of Justice initiated work on defining "federal offences" and federal law enforcement responsibilities. Initially, this was to be a major part of FLEUR. Section IV of the CSIS Bill provided part of a definition of "federal offence" and consultations are currently in process regarding the implementation of these provisions. The RCMP views this as the first step in formally defining its federal role and responsibilities. The RCMP's federal responsibilities continue to be defined in piecemeal fashion, partly in legislation, partly through executive orders, agreements and memoranda of understanding, and partly through informal agreements.

Provincial response to recent Supreme Court decisions on federal responsibilities for prosecution, provincial concerns regarding the federal role in drug enforcement and general federal/provincial tensions over recent negotiations have apparently inhibited progress toward a fuller formal definition of federal offences and federal law enforcement responsibilities. The Department of Justice has not pursued this initiative.

ASSESSMENT

Federal law enforcement has become particularly important as the new and accessible communications technology has transformed criminal activity. The need for coordinated, effective and efficient federal law enforcement becomes more apparent as crime more easily crosses provincial and national boundaries, as new crimes emerge, as enterprise crime and particularly drug offences pose increasing threats to Canadian society and as Canada becomes more vulnerable to acts of terrorism.

The RCMP is in the process of reorganizing to address increased demands for federal law enforcement and protective services. The FLEUR project, with the full support of the RCMP, is coming to fruition and will recommend to Cabinet a one-year action plan and a second Memorandum to Cabinet following this initial phase.

Given recent federal/provincial tensions regarding criminal justice matters and given the apparent willingness of all parties to improve cooperation and working relations, there is some concern that the time is not propitious for pursuing what would be a highly contentious effort to define formally the concept of "federal offence" and federal law enforcement responsibilities. At the same time, recent events -- the civilianization of the Security Service and cuts in RCMP contracts services -- make particularly urgent the clarification and strengthening of the RCMP federal role, beyond the provisions of CSIS and beyond federal statutes, to include those Criminal Code offences that require response by a national police force.

OPTIONS

The study team recommends to the Task Force that the government consider the following:

1. Support FLEUR Recommendations

   Given the federal/provincial sensitivities and the scope and complexity of the issues, a phased approach to change may be indicated. In consultation with all affected departments:

   a. create a federal police commission to provide services and direction at the federal level similar to those provided by provincial commissions;
   b. clarify departmental and RCMP roles and responsibilities regarding federal statutes;
   c. review all federal statutes to ensure that the appropriate (in terms of need and compliance with the Charter) level of "power" is granted various enforcement units and the creation of a federal enforcement act, separate from the Criminal Code, for granting legal protections (complements Police Powers Project of Criminal Code Review);

d. consolidate training and coordinated planning with the use of existing training facilities and resources to provide more uniform and consistent training to all those at the federal level involved in inspection and enforcement; and
e. create mechanisms for the development of more uniform reporting and a shared data base on federal offences and federal enforcement activities.

2. Support the thrust of the Federal Compliance Project

The importance of this project was noted by the report of the study team on Regulatory Programs. Compliance with and enforcement of federal statutes is best viewed as a single system incorporating such elements as the policy purpose of the statute, the means by which rules are drawn up, the powers of inspectors and enforcement officers and the exercise of those powers. The compliance project is premised on the view that less use should be made of the criminal law which is often too cumbersome, costly and heavy-handed to deal with less serious regulatory offences.

3. Formal Definition of Federal Offence and Federal Law Enforcement Responsibilities

FLEUR and the Federal Compliance Project, taken together, provide the basis for a clear formal definition of federal offences and federal law enforcement responsibilities (beyond CSIS Section 4). If there is reluctance at this time to pursue federal/provincial consultations on jurisdictional issues, the Solicitor General Canada (in consultation with affected federal departments) should, at a minimum, develop the federal position on the future role and organization of the RCMP. To the extent that this is likely to raise fundamental issues about the responsibilities of the Attorney General of Canada, the position will have to be developed jointly with the Department of Justice.

POLICE SERVICES UNDER CONTRACT
Royal Canadian Mounted Police

OBJECTIVES

To prevent and detect crime and maintain law and order in provinces, territories and municipalities under contract.

AUTHORITY

RCMP Act, Section 20
Policing Agreements

DESCRIPTION

Police Services Under Contract was the largest RCMP program reviewed, involving over 50 per cent of the RCMP's total operating expenditures and person-year utilization.

Under a series of agreements entered into between the Solicitor General and provincial, territorial and municipal governments, the RCMP provides general police services to eight provinces (except Ontario and Quebec), the Yukon and Northwest Territories, and 194 municipalities. The current agreements expire on March 31, 1991 and can be terminated upon two years' notice by either party. RCMP detachments provide provincial policing services and enforce traffic laws in rural areas, towns, villages and hamlets with a population of less than 1,500 (or 5,000 in B.C.). Larger municipalities may enter into separate agreements.

The availability of RCMP services under contract has been provided for in legislation since its creation. The RCMP had provided similar services in the territories prior to the creation of the provinces. The original agreements with the provinces were no doubt a result of the capability the RCMP had developed to provide such services. When the provincial capability and resources to provide effective police services increased, the federal government was willing to continue to provide the services of the RCMP in large part because of perceived federal benefits in expanding the force. The terms and conditions of providing these services have varied with the relative financial positions of the federal and provincial governments and with the perceived benefits of the services. In 1940, the RCMP Act was amended to allow the provision of police services under contract to municipalities in provinces served under contract.

As a federal force, the RCMP enforces federal statutes and the Criminal Code when dealing with commercial and organized crime. In the contract provinces, the RCMP serves as the provincial force and thus enforces the Criminal Code and provincial statutes and, as a municipal force, municipal bylaws, as well.

Under the terms of the agreements, the RCMP Commanding officers act under the direction of the provincial attorney general who can have access to required information, effect deployment of RCMP forces within the province, call upon the force to respond to emergencies and, with the permission of the Solicitor General, modify the size of the provincial force.

Police Services Under Contract involve the following major tasks: detachment policing services; traffic services; special investigations; telecommunication; police service dogs; field investigation; crime prevention and police/community relations; operational support; judicial detention; air services; marine services; criminal intelligence; commercial crime; and property and information protection.

A centralized policy centre at Ottawa (Contract Policing Branch) is responsible for coordinating and evaluating all matters relating to the negotiation and administration of the provincial, municipal and territorial policing agreements; for coordinating and preparing the operational plan for all disciplines within Police Services Under Contract; for identifying operational requirements; researching, developing and coordinating policies; evaluating equipment for provincial and municipal policing units and for all tactical areas within the authority of the Director, General Enforcement and Support Services; for all areas of traffic law enforcement; and for crime prevention and police community relations.

The financial terms of the agreements are based on a sliding scale through which, in the final year of the agreements, the provinces reimburse the federal government for 70 per cent of the cost of provincial police services. Municipalities under 15,000 population reimburse the federal government at the same rate while those over 15,000 (mostly in B.C.), by 1990, reimburse the federal government for 90 per cent of the cost of municipal police services.

The federal financial share is supposedly based on the calculation of federal benefits gained through the agreements. Most important is what is referred to as the "two-hatted" benefit. The RCMP, under contract, enforces the Criminal Code, provincial statutes, certain municipal bylaws and federal statutes. In addition to this dual or multiple RCMP role, the agreements provide a range of less tangible, but no less important benefits: a pool of redeployable, well-trained police; diverse experience for RCMP members; a visible, unifying federal presence; a single command structure; economies of scale; a greater degree of clarity, continuity and consistency in policing in Canada; and an emergency response capability.

BENEFICIARIES

Citizens and governments of the eight provinces, two territories and 194 municipalities with policing agreements, plus the federal benefit.

EXPENDITURES ($000)

	83/84	84/85
Gross Expenditures	563,620	581,469
Revenues	312,938	-357,989
Net Expenditures	250,682	223,480
PYs	9,835	9,734

OBSERVATIONS

Although federal benefit is impossible to quantify precisely, a federal task force on law enforcement arrived at a consensus that 25 per cent for provincial agreements and 10 per cent for municipal agreements reflected overall federal benefit. The nominal federal share for provincial agreements will be 30 per cent by the end of the agreement. In fact, the real provincial and municipal burdens are lighter than the agreements would indicate because the cost base which is shared has itself been negotiated. Through these negotiations, headquarters costs, including Canadian Police services and interprovincial transfer costs, have been excluded from the cost-base (and are thus borne entirely by the federal government). In addition, a concessional "office rental" rate (for lower than real costs or value per square foot) serves to lower the cost-base to which the cost-sharing formulas are applied.

In fact, the position of Ontario and Quebec (who do not contract) continues to be that the contracts are a means of delivering a federal subsidy to the other provinces. They have sought "to recover" from the federal government this "foregone subsidy" and continue to explore alternatives toward this end. The federal position has been that the agreements do not provide a subsidy and that contract services are available to all provinces.

In the past, one of the major problems in contract police services has been the dual responsibility of contracted RCMP (to the province and the federal government), and while the 1981 contracts addressed this issue, some provinces continue to express concern about the conflict potential of current arrangements. From the provincial perspective, concern was expressed about the degree of control the provincial government is actually able to exert, especially given the Supreme Court decision reinforcing the RCMP's internal disciplinary authority. From the federal perspective, police policy analysts and researchers have expressed the concern that the growth in contract services and commitment to meet provincial and municipal priorities has cut into the attention given and resources allocated by the RCMP to federal enforcement.

Nevertheless, interviews in the provinces indicated a typically high level of satisfaction with contracted services and good relations among the various police forces in each province. Several mentioned the advantage of being able to draw upon the excellent RCMP infrastructure of training, expertise, information and services.

At the same time, some pointed out areas or functions which might better be performed by local, often less highly trained personnel at lower costs. Among those mentioned were "judicial and detention services" and "highway traffic" services. Some provinces have taken over the former.

Furthermore, over the course of the current agreement, the Province of New Brunswick took advantage of the exclusion clause to create their own Provincial Highway Patrol, thereby reducing their RCMP complement by about 95. Although the N.B. Highway Patrol is too new to allow a valid evaluation, the province is apparently satisfied with its early accomplishments in traffic enforcement. Other provinces are also apparently examining this option.

The federal benefit also seems to diminish as the size of the municipality increases. Newfoundland is cutting back on RCMP services, especially in its larger municipalities, by expanding the territory covered by the Royal Newfoundland Constabulary (RNC). In large part because of the considerable expense in creating an infrastructure for provincial policing and because of general satisfaction with RCMP services, the province has formally announced that the expansion of the RNC will stop in 1986, and the province has adopted a "two-force policy".

The Secretariat of the Solicitor General is in the developmental stages of a project to review Federal Resources Employed in National Policing (FRENP) which, if carried out, should provide essential information to assist in evaluating the provisions of the current agreements and the relationship between the agreements and federal law enforcement priorities.

ASSESSMENT

The federal government has five years in which to develop its policy and renegotiate its position with the provinces. In the view of the study team, it is evident that any attempt to pull out of contract services entirely during this time would create very considerable federal/provincial conflict and would place an impossible burden on some provinces. Furthermore, it would, under present circumstances, make it virtually impossible for the RCMP to fulfill its federal responsibilities. Nevertheless, especially given the position of Ontario and Quebec, the study team believes a reappraisal of the cost-base and cost-sharing formulas may be in order.

Given the limited federal benefit derived from policing of larger municipalities and the growing emphasis on community-based approaches to municipal policing, consideration might be given to withdrawal from or full cost-recovery in the separate agreements with municipalities of over 15,000 population. By 1986, there will be 28 such municipalities under agreement with the RCMP: 22 in British Columbia, five in Alberta, and one in Saskatchewan, at a federal cost of about $13 million.

In the study team's view, restriction of the range of services offered under contract may also benefit both federal and provincial governments. Consideration might be given to local or provincial delivery of judicial and detention services and highway traffic services. While the RCMP position has been that both, particularly highway services, are integral to an overall program of policing and that the RCMP can provide such services cost-effectively, the New Brunswick "experiment" offers at least some promise that alternative arrangements can be effective.

OPTIONS

Because of the formal agreements, any changes to be considered will necessarily be phased to be implemented during the negotiations of the 1991 agreements. The Solicitor General's FRENP study, if it is carried out, would provide essential information for the review of the cost-base, cost-sharing formulas and federal and national benefits of the current and future agreements. In the view of the study team, this study should be implemented as soon as possible.

The study team recommends to the Task Force that the governnment consider the following:

1. Maintain the status quo

   While the status quo would be least contentious, it would leave unresolved a number of important issues: contract services cut into federal law enforcement priorities; contract services may not be the most appropriate way of meeting local needs and growing demands for community-based policing; contract services create some problems for provincial governments' ability to control policing in their provinces; and the current contracts may call for greater federal expenditures than warranted on the basis of federal benefits derived.

2. End Contract Policing

   While Ontario and Quebec have already opted oit of RCMP contract services and one other province has intimated that this is a possibility in the medium term, most provinces would react very unfavourably to the withdrawal of contract services, in large part because of the substantial costs involved in re-creating, at a provincial level, the police infrastructure which the RCMP provides. The RCMP has expressed the concern that without a corresponding formal expansion of its federal mandate and role, the withdrawal from contracts would mean a significant loss in federal visibility across Canada, the weakening of an important unifying symbol, a serious loss in the consistency and coordination of policing in Canada and, most important, a serious deterioration of the force's ability to meet its federal responsibilities.

3. The RCMP could announce its intention of withdrawing in 1991 from contracts with municipalities of over 15,000 population.

   Newfoundland will have already cut contract services in the last of its largest municipalities and only British Columbia would be seriously affected. Local police might better meet demands for community-based approaches. The RCMP has expressed concerns that such a move would inhibit federal visibility to some degree, reduce RCMP effectiveness in B.C. and create personnel management problems. (The larger municipalities are generally seen as desirable postings.) Nevertheless, this option may be an effective way of increasing provincial control of policing while allowing the RCMP to place greater emphasis on its federal responsibilities. The federal government would be required to provide two-years notice. It would be preferable to give much longer notice of intent and allow the current agreements to run their course.

4. Similar considerations would apply to withdrawal from particular services (e.g. traffic services) although in this case no unilateral position may be possible given the different levels of readiness among the provinces to provide such services directly.

IDENTIFICATION SERVICES
Royal Canadian Mounted Police

OBJECTIVES

To assist, upon request, all Canadian law enforcement agencies and other government departments, by providing specialized identification services.

AUTHORITY

RCMP Act, Section 18
Identification of Criminals Act
Criminal Code of Canada, Sect. 106.6(1)
Criminal Records Act, Sect. 6(1)
Young Offenders Act, Sect. 41(4)

DESCRIPTION

The RCMP manages national identification services, including a centralized fingerprint file, arrest and conviction records, firearms registration (and separate program review), handwriting specimens of fraudulent cheque authors, and publication of the Gazette. These services are available, at no cost, to all accredited Canadian police forces, allied international law enforcement agencies, the Canadian criminal justice system and federal and provincial government departments.

Identification Services started with the establishment of the Central Fingerprint Bureau in 1910. In 1966, at a federal/provincial conference on organized crime, the federal government reaffirmed its desire to maintain and expand these services and to offer them at no cost as a Canadian police service. Fingerprint automation, pioneered by the force, was completed in 1981/82. More recently, criminal history files have been microfilmed and automated, permitting instant field access to complete records which in the past took up to six weeks to provide manually. The Canadian Police Services Information Centre, linked with Washington, provides a 24-hour information service to the police community. Fingerprint searches for non-criminal purposes are carried out to assist in processing certain passport and visa applications and some employment applications.

BENEFICIARIES

All accredited police agencies in Canada, allied international police agencies and other federal government departments.

EXPENDITURES ($000)

	83/84	84/85
Gross expenditures	19,757	22,419
Revenue	-	-
Net expenditures	19,757	22,419
PYs	450	446

OBSERVATIONS

Improved technology has affected Identification Services, allowing improved services with significant cuts in person-years in the past two years and projected for next year. The developments in identification automation have been viewed very positively in the police community nationally and internationally.

These services are viewed by police across Canada as essential for efficient and effective law enforcement. The adequacy of the information bases depends entirely on the participation of police forces in submitting the required information. The better and more complete the participation, the more effective the service will be. Given the benefits derived by all police, not least the RCMP, any attempts at cost recovery -- which might inhibit police participation -- could reduce the overall effectiveness of law enforcement. The RCMP is currently examining ways of recovering costs for civilian searches (e.g. for visas and employment).

Participation is very good for all data bases with the exception of fraudulent cheques, which is used primarily by larger police departments with specialized fraud units, particularly Montreal and Toronto. The force is developing strategies to ensure that this too is a national system.

Although larger forces are developing local identification systems, these cannot replace a national system. However, these developments underscore the importance of the development of uniform protocols and standards, for example, for fingerprinting and photographs, to ensure compatibility of systems and minimum standards of quality.

ASSESSMENT

Identification services are efficiently and effectively run and are essential for effective policing at municipal, provincial and national levels. In the view of the study team there is no alternative source for these services.

Given the development of local systems, the RCMP role in the development and promotion of standards takes on even greater importance.

OPTIONS

The study team recommends to the Task Force that the government consider the following:

1. Maintain the status quo

   Pursue efforts at cost-recovery of civilian searches.

2. Close the Fraudulent Cheque Section

   Despite its limited and uneven use, the Fraudulent Cheque Section provides a valuable service which can be offered only at a national level. Furthermore, the RCMP is developing strategies to encourage contribution to and use of the service more consistently throughout the police community.

3. Cost recovery

   Because the service depends on the quality of participation of police forces across Canada in sending in the required information and fingerprints, the introduction of cost-recovery could jeopardize the quality of the program. On the other hand, most of the services have become integral to policing and are very highly valued in the police community. Cost-sharing of the costs of Identification Services could, then, be considered in the context of the renegotiation of contracts.

PUBLICATIONS, DISPLAYS, MUSICAL RIDE AND BAND
Royal Canadian Mounted Police

OBJECTIVES

The overall public relations effort in the RCMP is directed towards the: enhancement of the public image of the RCMP and hence Canada; improving relationships with the media; increasing public awareness of the police role; and ensuring better informed policemen regarding new trends, new legislation, etc., thereby improving the overall efficiency and effectiveness of police services provided.

AUTHORITY

RCMP Act 21(2)

DESCRIPTION

The formal public relations function within the force is carried out through the Public Relations Branch, the Musical Ride, the RCMP Band and the RCMP Museum. The Public Relations Branch, located at RCMP Headquarters, Ottawa, is responsible for liaison with the media and the public. Additional services provided include maintaining the official history of the force, publishing the RCMP Quarterly (sold to members of the force and the public) and the RCMP Gazette (issued to accredited law enforcement agencies on a restricted basis), and developing and maintaining official RCMP displays.

The Musical Ride and the RCMP Band are highly visible and widely known public relations entities for both the RCMP and Canada. Tours conducted throughout Canada and abroad (in consultation with External Affairs) support government objectives and have made them internationally recognizable symbols of Canada. The band devotes particular attention to youth through school concerts and clinics and to the aged through a visitation program.

The RCMP museum is located at "Depot" Division, Regina, Saskatchewan, and is open to the public all year. It documents and displays the force's history, which is a major part of Canadian history.

EXPENDITURES

	83/84	84/85
Expenditures	$7,703,000	$7,437,654
PYs	132	135

Cost Breakdown 1984/85	Expenditures	PYs
Public Relations, publications and displays	$1,167,506	33
Musical Ride	3,500,311	55
Band	2,515,777	44
Museum	254,060	3
TOTAL	$7,437,654	135

OBSERVATIONS

An evaluation of the program is nearing completion but results are unavailable. While impossible to quantify, the program, particularly the Musical Ride and band, are generally considered important national symbols both within Canada and internationally. The force views the public relations functions as crucial to community relations and for improving the public support necessary for effective policing. While not an integral part of police operations, curtailment of these programs could bring strong public reaction in view of their traditional role in Canada.

A proposed reorganization of the "N" Division in which the Musical Ride and band are now located will bring these activities under the same management as other community relations activities. The force has already instituted a fee for the Musical Ride ($1500) and recovers all costs exclusive of salaries for foreign tours.

Some representatives of other riding associations have suggested that the RCMP could replace most of the members of the Musical Ride by using members of these associations, in RCMP uniform, on a voluntary basis. These associations (e.g. Governor-General House Guards) perform similar functions with highly-skilled riders. Similar arrangements could be made for the band. An audit of "N" Division indicated that members of the band are often asked to respond to questions about the force and law enforcement that civilian musicians would not be able to field. Futhermore, the use of non-members could dilute the value and impact of these activities as a national symbol.

ASSESSMENT

As public and community relations are an integral part of policing and this program enhances the image of the RCMP, it likely contributes to the effectiveness of their prevention and law enforcement activities. It is impossible to quantify the benefits but it is safe to say that these activities are not integral to police operations. Nevertheless, in the view of the study team, the Musical Ride, the band and the museum have become immportant national and international symbols and RCMP publications are valued within the police community.

OPTIONS

The study team recommends to the Task Force that the government consider the following:

1. Maintain the status quo and continued attempts at cost-recovery.

2. Use skilled volunteers to perform Musical Ride and band functions.

3. Abolish the Musical Ride and band program.

The team was divided among the three alternatives: some argued that the non-quantifiable benefits of the programs and their importance as a national symbol justified the status quo (with continued attempts at cost-recovery); some argued that the use of volunteers could radically reduce costs without jeopardizing the symbolic value of the program; and some argued that the program was a luxury which the federal government can no longer afford.

PRIVATIZATION WITHIN THE RCMP
Royal Canadian Mounted Police

DESCRIPTION

Currently, the RCMP makes relatively little use of private sector services. In the view of the study team, a number of in-house support, technical and professional services could be relatively easily contracted-out with minimal disruption:

a. Post Garage Services: While most force vehicles are now serviced outside, the force maintains 10 post garages. Contracting these services out would reduce the Transport Management Program by up to 42 person-years.

b. Design and tailoring: The force employs 39 person years at Headquarters, Depot and 'N' Division to design and tailor clothing. In all other divisions, services are contracted out. Contracting-out tailoring services would save up to 39 person-years.

c. Printing: The RCMP employs 22 person-years in the Materiel Management Program to provide printing services. All these positions could be eliminated by use of contract services.

d. Systems Analysis and Development Programming: In part because of security concerns, the RCMP has been reluctant to use private consulting for electronic data processing and telecommunications Services. Much more development work for application systems could be contracted-out. Currently 81 person-years (with a total budget of $3,239,885) are employed in systems analysis and programming. Some of this could be contracted-out.

e. Photographic Services: Within Identification Services, the RCMP employs 53 person-years (and a total budget of $2,280,023) to provide photographic services to the force. This includes black and white and colour processing services, assistance to security personnel by provision of photographers, maintenance, repair and evaluation of equipment, design and modification of special equipment and production of videotape and sound-slide materials. While some of the services are devoted to tailoring equipment and products for police purposes, much more use could be made of contract services in processing, maintenance and repair. The RCMP has hesitated because of concerns about security and confidentiality.

f. Food Services: The RCMP provides mess services in nine Divisions, including Headquarters, Depot Division and the Canadian Police College. The RCMP attempts to recover, through sales revenue, 100 per cent of the direct production and serving salary costs and 100 per cent of the food costs. In 1984/85, 84 per cent of these costs were recovered; in 1985/86, over 90 per cent will be recovered; and by 1987, full cost-recovery will have been achieved (except for administrative overhead). The administrative overhead is slightly over $1 million and the 1984/85 operating deficit approximately $1.7 million. One hundred and five food services and 19 administrative and policy person-years are employed.

In 1980, Treasury Board requested the RCMP to examine alternatives to their in-house food services. On the basis of the results of the RCMP study, Treasury Board approved the retention of in-house food services. On the basis of experiments with catering firms, the RCMP has concluded that contract services are not feasible for relatively low-volume messes. In one case, for example, the contractor demanded progressively increased subsidies and in another, the contractor refused to renew the contract because of difficulties in meeting profit targets. While larger messes could be privatized, the RCMP has been reluctant to move in this direction because of labour relations concerns, possible instability in operations, need for security of privileged conversations and because contracting out only the largest services, while maintaining the in-house messes, would be somewhat more expensive than total in-house services.

The RCMP attaches a good deal of importance to the role of the mess in providing a secure meeting place which contributes to the morale and "esprit-de-corps" of the force and in maintaining force traditions.

ASSESSMENT

Although no fiscal savings are likely, considerable savings in person-years could be achieved by increased use of contracting-out, in the view of the study team.

OPTIONS

The study team recommends to the Task Force that the government consider the following:

1. Contract out:
   a. post garage services;
   b. design and tailoring; and
   c. printing.

2. Increase use of contracts in:
   a. systems analysis and programming; and
   b. photographic services

3. Initiate tender process for contracting food services in the largest messes and all other messes where feasible. If some smaller messes do not prove feasible for contracting-out, increase cost-recovery to help defray administration overhead costs.

EMERGENCY PLANNING
OVERVIEW

BACKGROUND

In Canada, all levels of government have some responsibilities for and are involved in emergency planning and preparedness.

The federal government is responsible for emergency planning in the specific spheres of federal jurisdiction as outlined in section 91 of the BNA Act and for "national emergencies" under the residuary power and the Crown prerogative. Except for the War Measures Act and the Energy Supply Emergency Act of 1979, there is at present no comprehensive legislation to deal with emergencies, although Cabinet has recently approved drafting instructions for such legislation. Existing emergency planning organizations have, therefore, been established through the use of the Crown prerogative and by Cabinet decisions.

Provinces are responsible for emergencies of a provincial and local nature. Every province has comprehensive emergency legislation establishing an emergency measures coordinating agency (EMO) empowered to coordinate departmental plans and enforce departmental accountability. These agencies are also responsible for coordinating and, in many cases, mandating municipal emergency plans. The threshold between a "national" and "provincial" emergency and the issue of who is responsible for operations in case of "national" emergencies have yet to be defined clearly. This is a source of disagreement with several provinces, notably those which have a strong emergency planning capability such as Alberta, British Columbia and Quebec.

The federal emergency planning program began in 1948 as one of civil defence for war, and continued as such until 1966, when Cabinet expanded the mandate of the then Canada EMO to include peacetime disaster planning and coordination. Peacetime emergency planning became preeminent after the 1973/74 Cabinet review of crisis management arrangements.

In its 1980 review of emergency planning, Cabinet adopted the following principles which have set the approach and the framework for emergency planning within the federal government and in its relations with provinces.

All levels of government in Canada have a responsibility to plan and prepare for emergencies for which an adequate response goes beyond what might reasonably be expected to be provided by private means.

The initial responsibility for meeting peacetime emergencies normally rests with those directly affected.

Where government action is required, the sequence of responsibility would normally start at the local level, move to the provincial and, finally, to the federal level.

Government emergency planning is most effective where responsibilities, resources and aspirations of federal, provincial and local governments are merged through cooperative planning into mutually acceptable arrangements covering the preparation for and response to emergencies and their consequences.

Such joint planning seeks to develop strength by providing a common purpose for separate jurisdictional authorities. Plans and preparations undertaken by the federal governnment in this respect emphasize operations related to areas of federal constitutional responsibilities and large-scale disasters.

The planning to meet a war emergency is founded on the national state of preparedness which will be achieved through implementation of policies related to peacetime emergencies, plus a determination of what further measures will be necessary to meet a war emergency.

Mandated emergency agencies in all provinces agree implicitly with the above principles. Six provinces and the two territories have signed memoranda of understanding with the federal government endorsing the above and committing themselves to cooperate in emergency planning for both peacetime and wartime. The remaining provinces have indicated their willingness to cooperate and share resources, provided the issues of constitutional jurisdiction and of respective roles and responsibilities are clarified.

On the occasion of its 1980 review, Cabinet entrusted Emergency Planning Canada (EPC) with the responsibility for comprehensive emergency planning policy development and policy coordination under the guidance of the Interdepartmental Committee on Emergency Planning. EPC was also charged with the overall coordination with provinces and the administration of the Joint Emergency Planning Program and the Disaster Financial Assistance Program. In addition to the above, EPC is responsible for emergency situation monitoring, federal crisis management preparedness training and public information services which it delivers directly through its headquarters administration, 10 regional offices, the Canadian Emergency Preparedness College at Arnprior and its NATO attaché.

The Emergency Planning Order of 1981 (PC 1981-1305) assigned emergency planning and preparedness responsibilities for both wartime and peacetime to all departments and agencies. They are responsible for emergency planning related to their normal area of activity and are the delivery mechanisms for specific federal emergency response and assistance plans. Departments and agencies are directed to assume the lead responsibility in emergencies falling within their areas of responsibility. The Emergency Planning Order also directed the creation of 11 national emergency agencies. At that time a five-year plan for implementation of the above was proposed and accepted by Cabinet. However, due to restraints, the annual level of funding required to reach these goals could not be made available and the time-frame had to be extended.

ISSUES

Absence of Clear Policy and Priority

Emergency planning has not been given a high priority across the government for a number of years. There is a general recognition of its importance and desirability but there is no sense of urgency. In the absence of a clear government priority, departments tend, in time of restraint, to allocate their efforts and scarce resources to areas of immediate priorities and high visibility, rather than to long-term hypothetical and intangible needs. Even where resources have been allocated by Cabinet, some departments have not used them. Despite the 1981 Planning Order, some departments have not developed plans or have done so very slowly. Some national emergency agencies still have to be established. In the area of wartime planning, an area of undeniable federal responsibility, there has been little planning for the last 10 years. Indeed, in the view of the study team, Canada is not meeting its civil protection war preparedness commitments to NATO. Provinces have expressed concern about the absence of war planning. At the forthcoming ministerial federal-provincial conference, scheduled for early 1986, they are likely to press the federal government to focus on this issue and take a decision on whether or not it will get involved in wartime planning. Provinces have implicitly or explicitly indicated their readiness to cooperate with the federal government in this area.

In the view of the study team, there is an urgent need to clarify federal policy with respect to both wartime and peacetime emergency planning, to determine its priority and in the hypothesis of an affirmative decision to strengthen the federal internal machinery and to reinforce federal-provincial consultations at the ministerial level.

By international comparisons, Canada is spending little in this area, $1 per capita for both types of emergencies, compared to $40 per capita in Switzerland, $28 per capita in Sweden and $25 per capita in the United States on war preparedness alone. To increase Canada's preparedness would not require vast sums. The cost of a war preparedness program is estimated to range from $50 to $200 million over a five-year period, depending on the scale of the program. The infrastructure put in place for war emergencies could also serve for peacetime emergencies and could be developed in consultation and cooperation with the provinces. The other major need relates to the replacement of the Arnprior Canadian Emergency Measures College which would require a capital investment of $15 to $20 million. This college is dedicated to education and training deemed fundamental to planning and preparedness. It is considered a high priority by all jurisdictions. The study team believes other programs need not be expanded over their current levels.

JURISDICTION

Since 1980, there has been a considerable improvement of relations between EPC and provincial emergency planning authorities. This is in large part due to the initiative of EPC in developing regular and effective consultation mechanisms, to the establishment of the Joint Emergency Planning Program (JEPP), to the involvement of provinces in the development of the Arnprior training and education program, the general satisfaction with the disaster financial assistance arrangements and the efficient service EPC has provided to provinces. However, the issue of respective jurisdiction, especially regarding "national emergencies" versus "provincial emergencies", is still outstanding, "national emergencies" never having been clearly defined in some provinces' view. The Emergency Planning Order directing the development of departmental plans and national emergency agencies for both wartime and peacetime emergencies without prior consultations with provinces has exacerbated this issue. While the proposed legislation on Safety and Security in Emergencies will contribute to the clarification of what is a "national emergency", there is a need, the study team believes, to resolve with provinces the issue of respective jurisdictions and subsequently tackle the question of respective roles and responsibilities with respect to both peacetime and wartime emergency planning, preparedness and response.

Federal Emergency Planning and Organization

Operational responsibility for the federal government's planning, preparedness and response to actual emergencies has been decentralized to departments which have the functional expertise necessary for managing the response, including assistance provided to provinces. The development of departmental plans and national emergency agencies directed by the Emergency Planning Order is very uneven across departments and agencies; some departments and agencies are quite advanced while others are lagging or have done nothing at all. There is at present no mechanism or organization mandated to ensure compliance by departments and agencies. Furthermore, departments and agencies developing plans often do so in relative isolation from one another. As a result, there is no unity of direction at the federal level and provinces often complain of the numerous and unrelated requests of federal departments and agencies without due reference to EPC or the mandated provincial emergency planning agency and the absence of a clear overall federal policy.

EPC, which is technically responsible for policy coordination and comprehensive policy development (through the channel of the Interdepartmental Committee on Emergency Planning), has in fact no authority to ensure that departments discharge their responsibilities or to ensure a common direction, coherence and coordination to the plans and in relations with provinces. While departments should, in the view of the study team, retain the lead role in preparing and responding to emergencies coming within their authority, there is a need for a strong central organization with a clear mandate to give direction, guidance and support, to ensure compliance, to take charge when lines of responsibility are not evident or nonexistent and to ensure coordination, both within the federal government and with provinces.

In its present form, in the view of the studys team, EPC is unable to fulfill this role adequately in its present form. It has no separate existence. It is attached to the Department of National Defence which negatively affects its credibility as federal coordinator and vis-a-vis the provinces which suspect it could become subservient to DND in a major disaster or war situation. Its current administrative arrangements stem from a patchwork of ad hoc decisions made over an extended period. These arrangements are administratively anomalous, accountability is blurred and the agency's effectiveness is vulnerable to unintended consequences of organizational or personnel changes outside the agency's control. To be most effective, the study team believes EPC's mandate, role and responsibilities would need to be given a basis in law.

OPTIONS

The study team recommends to the Task Force that the government consider the following:

1. Consultation with provinces to clarify the issue of jurisdiction and respective roles and responsibilities.

2. A legislated mandate for EPC to coordinate federal civil emergency planning and preparedness.

3. Clarification of the role and responsibilities of departments and agencies to ensure compliance at the federal level and to promote harmonious federal/ provincial working arrangements.

EMERGENCY PLANNING TRAINING AND EDUCATION
Emergency Planning Canada

OBJECTIVES

The objective of this program is to provide to Canadians who have responsibilities for planning and directing emergency response operations the necessary training, skills and techniques required to effectively carry out these responsibilities.

AUTHORITY

There is no statutory or regulatory authority for this program. It is authorized by the Main Estimates.

DESCRIPTION

Courses in civil defence were first conducted in Ottawa and Hull in the early 1950s. In 1954, the RCAF Base at Arnprior was converted for use as a training centre and was named the Canadian Civil Defence College. In 1958 the name was changed to the Canadian Emergency Measures College. Up until the early 1970s all courses offered were oriented to wartime emergency planning. Following the Dare Report in 1974, training for peacetime emergency response was introduced into the curriculum in order to meet increasing requirements in this area.

From 1974 to 1978, the shift of emphasis to peacetime courses was completed. As peacetime emergencies increased in frequency across the country, the demand for training grew as well. From a low of 20 courses and attendance of 400 students in 1978, in 1985/86 there are over 100 courses with 2,500 students attending. These orientation and training courses encompass a variety of emergency-related subjects. Chief among these are plans and operations for peacetime emergencies, plans and operations for war, emergency health and welfare services, transportation of dangerous goods, emergency exercise design, community shelter planning, and radiological defence. Four entirely new courses have been added in the last six years and several more are being planned to meet the need for more advanced and specialized training for emergency responders and planners in communities across Canada. In addition to the above, a special course is held several times each year for mayors and elected municipal officials in recognition of their significant responsibility for emergency planning and response operations. As well, a major symposium is held every year to examine a selected emergency preparedness topic in depth. The symposium brings together large numbers of emergency planners representing all orders of government, the private sector and academic institutions. In 1984, the symposium focused on high technology and its potential applications in emergency preparedness.

Courses are offered free of charge to participants, including the cost of tuition, travelling expenses, food and lodging.

This program is conducted by the Training and Education Division, a component of the Plans Branch of EPC. The division includes five education officers, a training support element of five clerks and technicians and an administrative support element of seven persons with a program director in charge. Additional staff from other federal government departments are present from time to time to assist in course preparation and delivery. Public Works Canada maintains the training, residence and other buildings on the site. Student meals are provided by a catering firm under contract. Security is provided by the Corps of Commissionaires under contract. The central training facility at Arnprior provides 97 per cent of the training. The remainder is provided by staff at training seminars conducted in various locations across Canada.

Appointed officials and emergency planners from the three levels of government including mayors, elected municipal officials and members of the private sector are eligible to participate in this program. The majority of students (86 per cent) are from the local and provincial levels of government and are nominated by the provincial emergency coordinating agencies. Federal candidates for training are approved by the departmental officials responsible for emergency preparedness (13 per cent). Members of the private sector (1 per cent) may be recommended by the province or territory and are usually individuals responsible for a firm's safety and preparedness program.

It should be noted that through its Joint Emergency Planning Program (JEPP), EPC supports some training programs at the provincial and municipal levels. In addition, the Memoranda of Understanding signed with several provinces and the territories provide for training and education programs by both levels of government to support each other's emergency preparedness aims. The public information activities of EPC also complement the Emergency Planning Training and Education Program through the production and distribution of information materials on a wide variety of emergency-related subjects. These publications include pamphlets on self-help measures for selected emergencies, fact sheets on federal emergency planning programs and a quarterly digest of articles on topical issues in the emergency planning field. They also include technical documents, manuals on emergency planning and response procedures for distribution to more specialized emergency planning audiences.

EXPENDITURES

	83/84	84/85	85/86
Salaries			475,000
O&M			2,042,000
Capital			325,000
TOTAL	$1,764,739(1)	$2,477,100(2)	$2,842,000
PYs	8	8	18(3)

Notes:
1 Actual
2 Forecast
3 10 PYs transferred from PWC effective Oct. 1, 1985

Funding for this program comes from EPC A-Base.

Distribution of Payments By Provinces And Territories

The following table shows the distribution of student weeks by sector and province or territory.

Student Weeks, by Sector and Province

Province or Territory	Provincial Nominees	Provincial-Federal Nominees	Federal Nominees	Private Sector Nominees	Total	%
B.C.	211	10	17	8	246	12%
ALTA	90	15	15	14	134	7%
SASK	98	12	9	3	122	6%
MAN	180	10	11	2	203	10%
ONT	314	4	81	5	404	20%
QUE	202	4	55	3	264	13%
N.B.	173	11	11	2	197	10%
N.S.	138	18	13		169	8%
P.E.I.	71	7	5		83	4%
NFLD	71	11	5		87	4%
YUKON	14	6	3		23	1%
NWT	67	5	9	3	84	4%
TOTAL	1629	113	266	40	2016	99%

BENEFICIARIES

Canadians with planning and operating responsibilities in the emergency preparedness field.

OBSERVATIONS

Education and training is considered one of the most effective and cost-beneficial methods of delivering the concepts for emergency planning and preparedness at all levels of government. To meet both its peacetime and wartime emergency planning responsibilities, the federal government must have available a trained cadre of emergency planners and doers at all levels of government and in all areas of the country.

Organizations consulted at the provincial, territorial and municipals levels expressed a high degree of satisfaction with the emergency planning education program conducted by EPC. Provinces, with the exception of Quebec, rely heavily on the Arnprior courses and several have no other resource to train staff. The demand from most jurisdictions appears to outstrip the number of places available for them. As well as wanting an expansion in the number of places available and enlarged staffing for the Arnprior college, a number of provinces suggest the extension of existing courses and materials such as those relating to dangerous goods, computerized simulation exercises, and risks analysis, as well as the updating of the war planning course, development of courses in the area of taskforce coordination training, professional planning and training with respect to emergency public relations. Development of regional training by EPC in areas where large numbers of people need to be trained, such as health and social services and where regional specificity is important to effective delivery, is also suggested.

This program is used primarily to train the "trainers" for emergency planning and preparedness who then return to serve in their community on a continuous basis. Except for Alberta and Quebec, no province has extensive facilities or programs for training. Programs offered in Alberta complement, rather than overlap, the training provided by EPC.

This program is seen as providing benefits to the national emergency planning community through a central facility, which allows the development of national standards, and provides opportunities for pooling resources, developing common approaches, and for exchanging information. It is also suggested that for an outlay of slightly under $3 million the federal government buys a great deal of goodwill, visibility and benefit.

The courses for mayors and other elected officials are considered to be successful. They are seen as sensitizing elected officials to their emergency planning responsibilities and the need for action as well as providing them with peer support and a network of contacts across Canada. These courses, however, can accommodate only a small number of eligible municipal officials wanting to attend. While there is no doubt that this course is useful, one may question whether it is the role of the federal government to train municipal officials or whether this responsibility should more appropriately be left to the provinces which have jurisdiction over municipalities.

The tuition costs and the attendant living and travelling expenses are currently the responsibility of the federal government. Provinces and municipalities bear indirect costs of salaries of provincial and municipal participants and their replacement. Given the low level of funding now available from most provinces and the high costs of transportation, it is suggested that cost-recovery would lead to a reduction in the number of participants, increased pressure on provinces and, ultimately, to increased provincial demands for funding under the Joint Emergency Planning Program.

The range of courses offered by the Federal Study Centre at Arnprior covers areas of municipal and provincial responsibility and the range of clientele includes predominently provincial and municipal emergency planners (86 per cent of all participants in 1984/85). It is an open question whether the education and training program should cover areas of provincial and municipal jurisdictions or whether it should concentrate in areas of high specialization of national interest and on the development of basic course packages. Many jurisdictions have no training facilities or programs. It is not clear whether this is because of the existence of the federal program or whether it is due to low provincial priority and resource availability.

ASSESSMENT

There is a recognized need for an emergency planning education and training program. In the view of the study team, this program is successful but cannot satisfy the demand, in terms of number of places available, desired scope or quality of facilities. If the government were to place a higher priority on emergency planning education and training, this program would have to be expanded. If the respective roles and responsibilities of the two levels of government with respect to emergency planning were clarified, the program could be refocused on federal and national needs.

OPTIONS

The study team recommends to the Task Force that the government consider the following:

1. Restructure the program, focusing on federal and national requirements, leaving to the provinces and the municipalities responsibility for training in areas of their responsibility.

2. Increase expenditures on the program, expanding the number of highly specialized courses available, delivering courses outside Ottawa and replacing outdated training facilities at Arnprior.

EMERGENCY PLANNING AND RESPONSE COORDINATION
Emergency Planning Canada

OBJECTIVES

The principal objectives of the work of Emergency Planning Canada are to save the lives of Canadians threatened by emergencies of any kind; to reduce the amount of human suffering resulting from emergencies; and to mitigate property loss and damage caused by emergencies.

This program encompasses the total activities of Emergency Planning Canada (EPC) as a federal agency. It thus incorporates administration of the following programs: Joint Emergency Planning (JEPP), Emergency Planning Training and Education, Worker's Compensation Agreements, Emergency Planning Research Fellowship, and Disaster Financial Assistance Arrangements (DFAA), which are reviewed separately.

AUTHORITY

1980 Cabinet Decision (418-80RD(C)

DESCRIPTION

In addition to meeting its own emergency planning responsibilities, the EPC consults with the provinces on a number of measures such as:

a. a Joint Emergency Planning Program, under which the federal government will participate in the funding of projects which contribute to improved national emergency preparedness;

b. arrangements under which provinces may receive financial assistance from the federal government in meeting major disasters that would otherwise impose an excessive burden on their economies; and

c. arrangements to alleviate hardship to individuals arising from relatively small but locally severe disasters.

The objective of civil planning for war is to enable the nation to be placed swiftly and effectively on an appropriate footing to meet the civil requirements arising from hostilities involving Canada. Thus the Canadian civil structure must be prepared:

a. to support and maintain the Canadian Armed Forces;

b. to meet civil commitments to NATO, including those related to North American defence;

c. to meet the additional burdens which a war situation, including the support of allies, may place upon Canadian social, political and economic activities; and

d. to mitigate against the effects of foreign attack on the Canadian population, essential industries and services.

The program history of emergency planning has reflected policy evolution and shifts over almost four decades. The program began as one of civil defence for war, and continued as such until 1966, when Cabinet expanded the mandate of the then Canada EMO to include peacetime disaster planning and coordination. Peacetime emergency planning became preeminent after the 1973/74 Cabinet review of crisis management arrangements.

Emergency Planning Canada was established in its present configuration by a 1973 Cabinet decision which established an Emergency Planning Secretariat in the PCO and a National Emergency Planning Establishment attached for administrative support purposes to DND. These two components were integrated into Emergency Planning Canada in 1980, under the minister responsible for emergency planning, currently the Minister of National Defence.

Increasing contact and cooperation with the provincial governments, especially since 1981, in pursuit of a national capability and uniformity of preparedness standards, has led to the emergence of cooperative programs such as JEPP and DFAA.

Currently, for purposes of the FAA, EPC is attached to the Department of National Defence. The relationship with DND is one of administrative convenience. On policy and program matters, EPC is responsible, through its executive director, directly to the minister responsible for emergency planning. Administratively, EPC regroups two broad branches, one responsible for the development of plans, evaluation and education and the other for operations. Under the guidance of the Director General of Operations, an important element of EPC's structure is its network of 10 regional offices located in each provincial capital. They are important contact points for policy consultation, planning and program delivery coordination, as well as information reception and dissemination. They interact continuously with the public, with provincial government officials and with federal regional departments on emergency matters.

Comprehensive policy development, emergency planning coordination, intergovernmental consultation, emergency situation monitoring, federal crisis management coordination, national emergency preparedness training and public information services are delivered directly by Emergency Planning Canada through its headquarters administration, 10 regional offices, the Canadian Emergency Preparedness College at Arnprior and its NATO attaché. Much of this delivery is accomplished through an extensive array of standing and ad hoc consultative committees -- federal interdepartmental, federal/provincial, NATO alliance forums, Canada-U.S. groups, etc.

Emergency planning and preparedness responsibilities for both peacetime and wartime are assigned to all federal departments and agencies by the Emergency Planning Order (PC 1981-1305). Federal departments and agencies are, therefore, responsible for emergency planning related to their normal areas of activity and are the delivery mechanisms for specific federal emergency response/assistance plans. In addition, departments and agencies are, under the Emergency Planning Order, directed to assume lead responsibility in emergencies falling within their areas of responsibility. They must also provide, from their own resources, such assistance as may be required to another department which has been assigned responsibility for an emergency. Eleven departments have additionally been directed to develop and maintain plans for the establishment and operation of 11 National Emergency Agencies (Food, Telecommunications, Manpower, Energy, Financial Control, Health and Welfare, Industrial Production, Public Information, Construction, Housing Accommodation and Transport) and to the extent possible and desirable, to secure the cooperation and active support of the private sector and the provinces. Their combined efforts comprise what may be called the "horizontal" federal emergency planning program under the coordination and guidance of EPC. Under the Policy and Expenditure Management System (PEMS), emergency planning resources are allocated government-wide from the Services to Government Envelope by the Cabinet Committee on Government Operations on the recommendation of the minister responsible for emergency planning.

This program is also implemented through the emergency planning and response arrangements of the provincial and territorial governments, through the undertaking of joint preparedness projects funded by JEPP, through the coordination of provincial and federal response plans, through consultations and input to policy and program proposals, through the allocation of financial assistance to disaster victims in accordance with criteria for federal reimbursement and through the nomination of candidates for EPC-managed training courses.

EXPENDITURES

Emergency Planning Canada

	83/84	**84/85**	**85/86**
Salaries	$3,324,302	3,500,000(est)	3,752,932
O&M	2,198,223	3,090,083	3,696,000
Grants/ Contributions	3,471,391	5,623,574	6,398,000
Capital	354,005	908,804	1,060,000
TOTAL	$9,347,921	13,122,641	14,906,932
PYs	79	80	83*

*Note: Excludes transfer effective Oct. 1, 1985 of 10 PYs from PWC to EPC covering administrative staff at the Canadian Emergency Preparedness College.

Total Federal Emergency Planning Resources*

	84/85	**85/86**	**86/87**
$000	31,165	37,386	37,963
PYs	348	402	412.4

*Note: Based on resources reported by departments in 1985 Spring MYOPs. Includes EPC expenditures from the previous page.

BENEFICIARIES

The principal beneficiary of EPC's emergency planning and resource coordination program is the Canadian public as it is the basic aim of all emergency preparedness activity to save lives and minimize and mitigate human suffering and property damage. Both information and training dealing with emergency planning and response are provided directly to members of the public by EPC.

On a procedural basis, given the delivery mechanisms involved, the intermediate client groups with which EPC most frequently interact, and whose efforts to improve emergency preparedness may be supported in various ways, include the provincial/territorial governments, municipal governments, other federal departments and agencies (both centrally and regionally), public interest groups and associations, NATO and NATO member countries and research contractors.

OBSERVATIONS

Emergency planning has not been given a high priority across the government for a number of years. This may be attributed to the absence of a clear Cabinet priority and direction. The budgetary restraints of the last seven years have led departments to allocate scarce resources to areas of immediate priorities, high visibility and quick payoff rather than to long-term hypothetical and intangible needs.

Plans and preparations undertaken by the federal government to respond to wartime emergencies are all-encompassing. Those connected with peacetime emergencies emphasize operations related to:

a. constitutional responsibilities in the federal sphere;

b. large-scale disasters;

c. the achievement of adequate and reasonably uniform standards of emergency services across the country;

d. risk analysis, warning and communications; and

e. coordination of federal efforts with those of the provinces.

Since 1966, the increasing frequency of peacetime disasters has led to more emphasis on this area and a downgrading of wartime preparedness. There has been a low priority for and little war emergency planning in the last 10 years. The state of preparedness has consequently deteriorated. In the view of the study team, the government should examine whether it should prepare for war emergencies and, if so, to what extent. It should also determine whether it does so on its own, entrusts provinces with this task while providing them with financial assistance and support, or whether it adopts a mixed approach with provinces and municipalities assuming local and provincial responsibilities, while the federal government completes the network through national networks and systems. To upgrade war planning and preparedness, whatever the approach employed, would be fairly expensive. Depending on the scope of the program, the cost could range from $50 million to $200 million over a five-year period.

The Emergency Planning Order directing departments and agencies to develop plans and requiring the setting up of 11 national agencies for both peacetime and wartime emergencies does not come to grips with the limits of federal powers, especially in peacetime emergencies. It was implemented without prior federal/provincial consultations. Provinces do have jurisdiction for provincial/municipal emergencies. The order was perceived to intrude into provincial jurisdiction for the planning for and the management of peacetime emergencies. Confusion is amplified by the use of the term "national emergency", a term for which there is no accepted definition. The creation of national emergency agencies with perceived broad authorities to plan and manage emergencies within their mandated areas further increases confusion. It is suggested by the study team that the issue of jurisdiction be clarified. This is seen as essential for cooperative action and would ensure support for the federal government, if it decided to proceed with wartime emergency planning and preparedness. It would also allow clarification of respective roles and responsibilities in the event of an agreed upon "national emergency".

The emergency planning order referred to above was made by means of the Crown prerogative power. Indeed, except for the War Measures Act which deals with war-related emergencies, the most serious kinds of public order emergencies and the Energy Supplies Emergency Act of 1979, there is no comprehensive federal legislation to deal with emergencies. Ten statutes have limited provisions for specific types of emergencies. There are, therefore, large gaps in the existing legislative framework in this regard. Cabinet, however, has recently approved drafting instructions for comprehensive Safety and Security in Emergencies legislation. The proposed legislation does not deal with the specific responsibilities of departments and agencies, nor does it propose a statutory role or status for Emergency Planning Canada.

EPC is responsible for comprehensive policy development and emergency planning coordination at the federal level. This responsibility stems from a 1980 decision of Cabinet and has no other basis in law or regulations. Indeed, neither EPC's role, nor its existence, are mentioned in the Emergency Planning Order. Comprehensive policy development must be channelled to Cabinet via the Interdepartmental Committee on Emergency Planning, while the emergency planning coordination role of EPC is exercised through the interdepartmental committee. Chaired by the executive director, the committee's membership is supposed to consist of assistant deputy ministers. In practice not all departments accord it this level of representation. Departments and agencies are responsible for the preparation of their own departmental plans and, where so directed by the Emergency Planning Order, for setting up of national emergency agencies. The state of development of both plans and agencies varies considerably across the government, with some departments taking an active role, while others have done little. EPC has no power to compel departments to action, it can only plead and persuade. This applies at both the national and regional levels.

EPC has no statutory basis. The current administrative arrangements stem from a patchwork of ad hoc decisions made over a number of years. These arrangements are administratively anomalous, accountability is unclear and the agency effectiveness is vulnerable to unintended consequences of organizational or personnel changes outside the agency's control. Establishing EPC as a statutory and separate agency would strengthen its coordinating responsibilities both within the federal government and with provincial agencies, and in the provinces view, would lead to more cooperation and participation. In this context, the close relationship of EPC to the Department of National Defence (DND), which is responsible for the war defence functions, is seen as disadvantageous.

EPC has experience in the overall management of emergencies. In the view of the study team by clarifying and strengthening its role and clarifying the functional role of departments, both the "lead department concept" and the overall approach of the government to emergency planning would be strengthened. It would also help to meet the expressed concerns of provincial emergency agencies who want a "single window" to their respective jurisdictions on matters of emergency response planning and operations.

ASSESSMENT

In the view of the study team, EPC is impeded in carrying out its role as a central coordinator by the absence of clear government priority and policy, a statutory basis and the power to enforce the development of departmental plans and national emergency agencies. While EPC does an effective job of managing federal/provincial coordination, this effectiveness is less than it could be owing to the absence of a clear direction in federal emergency planning and the lack of clarity with respect to federal jurisdiction regarding peacetime national emergencies.

OPTIONS

Any alternative to the status quo requires, as a prerequisite, a decision on whether or not the government wishes to get involved systematically in emergency planning and preparedness for wartime and peacetime emergencies and to what extent.

The study team recommends to the Task Force that the government consider adoption of a positive emergency planning policy and priority accompanied by clarification of constitutional and operational jurisdictions as well as the strengthening of the federal internal machinery for emergency planning.

RESEARCH FELLOWSHIP EMERGENCY PLANNING
Emergency Planning Canada

OBJECTIVES

The objective of this program is to encourage study and research into ways of improving emergency preparedness in Canada by providing financial assistance to graduate students with an interest in this field.

AUTHORITY

The program is established under the Defence Services Program Vote 10, Grants and Contributions. EPC has signing authority.

DESCRIPTION

Instituted in 1966 to foster study and research into the mitigation of the effects of emergencies, this program complements EPC's ongoing research. Sponsored by EPC, it provides financial support to students pursuing graduate degrees in subject areas related to emergency planning. One research fellowship is awarded each year, at a basic value of approximately $11,000 per annum for up to four years of study.

EPC fellows have no formal obligation to the sponsoring agency, but it is hoped that exposure and training in this area will foster a continuing interest, especially in Canada.

This program is administered by the Association of Universities and Colleges of Canada (AUCC) on behalf of EPC. It is tenable at any university by EPC/AUCC agreement. Currently, the Institute of Environmental Studies, University of Toronto and the Disaster Research Center, Ohio State University, are approved. Preference is given to Canadian citizens who hold a Master's degree in Sociology, Geography, Political Economy or Urban and Regional Planning, although, candidates with a first degree in an appropriate area of study are also considered. Candidate selection, payments to students and fellowship advertising are carried out by AUCC.

EXPENDITURES

	84/85 Actual	85/86 Forecast
Grants/Contributions	$40,727	$60,000
PYs	-	-

OBSERVATIONS

There is no professional education in undergraduate or post-graduate levels available in Canada currently in the field of emergency planning. Emergency planning professionals are trained in the military, in the U.S. or other countries or through on-the-job training. In addition, because there is no formal education program in Canada, there is little or no academic research or study which would benefit both the academic and the emergency planning communities.

This program is under review with the intent of enlarging its scope and encouraging the development of courses in emergency planning in Canadian universities.

This program's intent is threefold: to provide a measure of awareness of the need for emergency planning; to attempt to foster disaster research carried out in Canada by Canadians; and to serve to recruit graduates who could work in disaster-related organizations. Given the program's small size, it can only be viewed as symbolic.

The specific research areas pursued by the beneficiaries of this program depend on the individuals' interest and personal selection, rather than on national emergency planning priorities.

A question which arises is whether this fellowship program should exist as a separate entity given the existence of the following programs: student loans; post-secondary education; and the Social Sciences and Humanities Research Council (SSHRC) research grants. It could be argued that the low priority accorded this area by students and laymen and its long-term importance warrants the existence of a special fellowship. Indeed, SSHRC has no specific priority for emergency planning and no Canadian university has a program in this area.

This program is very small; actual spending in 1984/85 amounted to $40,727, while the total budgeted for 1985/86 is $60,000. This level of funding is insufficient to build a meaningful research and professional capability.

ASSESSMENT

The federal government has a constitutional responsibility for civil emergency preparedness for wartime emergency and peacetime emergencies insofar as the latter fall within federal areas of jurisdiction or are national in scope. There is no study and research done at present in this area in Canadian universities, while the need for it and for highly trained persons is undeniable. In the view of the study team this program should be expanded. Encouraging the development of emergency preparedness courses could lead universities to take more interest in this area and to offer courses more widely.

OPTIONS

The study team recommends to the Task Force that the government consider the following:

1. Discontinue the program. This could be taken as a signal that the federal government no longer attaches interest in this area.

2. Maintain the program in its present form for symbolic reasons.

3. Program sufficiently to create one or two centres of excellence in the area of emergency planning research and professional training in Canada.

WORKERS' COMPENSATION AGREEMENTS
Emergency Planning Canada

OBJECTIVES

The objective of this program is to provide assistance to provinces/territories in meeting the costs of compensation paid to volunteer workers, or their heirs, who are injured or killed in the course of training for or carrying out emergency services work.

AUTHORITY

Bilateral agreements between the federal minister and provincial/territorial ministers which were signed between 1960 and 1963.

DESCRIPTION

The program began with the signing of bilateral agreements from 1960-1963. The federal government wanted to encourage volunteers to participate in emergency response work by ensuring that compensation identical to that applicable to the workplace was provided to volunteers injured or killed in the course of these activities. Provincial/Territorial Workers' Compensation organizations were not willing to extend such coverage without financial assistance. The existing agreements apply to "volunteer civil defence workers", interpreted to include volunteers engaged in work associated with peacetime emergencies. Cabinet authorization is currently being sought for bilateral agreements which will cover both peacetime and wartime contingencies. Under the existing arrangement, the federal government reimburses 75 per cent of the payments made by the Provincial/Territorial Workers' Compensation Boards.

Claims for compensation are submitted to Provincial/Territorial Workers' Compensation organizations using the same procedure as for work-related accidents. The workers' compensation organization determines the compensation to be paid as though the injury had occurred in a normal work situation. A claim is then made through the provincial Emergency Measures Organization for reimbursement by the federal government. These claims are processed through the Emergency Planning Canada (EPC) Regional Director who investigates to ensure that the injury or death was the result of emergency-related activities. If the director is satisfied that this is so, the claim is forwarded to EPC Headquarters with a recommendation for payment. Claims receive a final review at headquarters and cheques are then requisitioned for payment from Vote 10 - Defence Services - Operating Expenditures.

The provincial/territorial Emergency Measures Organization must certify that workers claiming compensation were engaged in volunteer work associated with an emergency. The provincial/territorial workers compensation organization must certify that it has accepted the claim and specify the amount of money it has paid by way of compensation. The federal contribution is 75 per cent of provincial/territorial compensation paid.

EXPENDITURES

	83/84	**84/85**
TOTAL	$211,985	$ 69,959
Value of Payments		
British Columbia	$211,985	$ 66,737
Alberta	Nil	Nil
Northwest Territories	Nil	Nil
Yukon	Nil	Nil
Saskatchewan	Nil	Nil
Manitoba	Nil	Nil
Ontario	Nil	Nil
Quebec	Nil	Nil
New Bruwnswick	Nil	Nil
Nova Scotia	Nil	3,222
Prince Edward Island	Nil	Nil
Newfoundland	Nil	Nil

No person-years are devoted specifically to this function which takes a small portion of the regional directors' time each year.

BENEFICIARIES

Volunteer workers, or their heirs, who are injured or killed in the course of training for, or carrying out emergency services work.

Criteria for Eligibility: volunteer emergency services workers must have been registered by a provincial/

territorial emergency services official before beginning the work which resulted in injury or death.

OBSERVATIONS

Civil wartime emergency preparedness, response for which the federal government bears sole responsibility, requires all the basic infrastructure and resources that are essential to civil peacetime emergency preparedness and response. Moreover, since it is also responsible for peacetime emergency preparedness in areas falling within its specific areas of jurisdiction, as well as for emergencies that are national in scope under its responsibility "for peace, order and good government", the federal government must also have the capacity to prepare and respond to civil peacetime emergencies.

In terms of the needed human resources, the federal government can either rely on volunteers or put in place its own programs and hire the needed personnel on a permanent or contractual basis. This latter option is more expensive in financial terms and it does not provide the same encouragement to individual responsibility and initiative.

Provision of coverage under Workers' Compensation Arrangements guarantees a measure of protection for volunteers and undoubtedly increases the number of persons willing to participate in such work, contributing to improved civil defence.

Volunteers also afford more flexibility. Given the size of the country and the sparse population in many areas, local initiative and responsibility can assure a coverage which a government program might find difficult to equal.

Most of the compensation claimed under this program relates to air search and rescue in coastal provinces, notably British Columbia and Nova Scotia, provided by volunteers who operate their own planes. Air search and rescue is a federal responsibility coming within the mandate of the departments of National Defence and Transport. In this specific area of compensation, those two departments should reimburse EPC its share of costs, in the view of the study team.

The level of federal cost-sharing is set at 75 per cent. This may be considered high. Considering the federal government's responsibility in this area, however, the attendant requirement for emergency preparedness and response, as well as the need to rely on sound local and provincial organizations which act as first line of defence, this level of sharing is defensible.

ASSESSMENT

In the study team's view this program complements rather than duplicates provincial programs. It is well administered and relieves the federal government from having to set up its own cadre of "emergency workers" and/or run its own compensation program. It implicitly encourages individual responsibility.

OPTIONS

The study team believes there is no other viable alternative but to continue this program. The study team recommends to the Task Force that the government consider authorizing EPC to renegotiate the agreements with the intent of updating them and providing coverage for wartime contingencies as well.

JOINT EMERGENCY PLANNING PROGRAM
Emergency Planning Canada

OBJECTIVES

The objective of this program is to encourage and support cooperation between federal and provincial governments in working toward a national capability to meet emergencies of all types with a reasonably uniform standard of emergency services through sharing in the costs of provincial and municipal projects which enhance the national emergency response capability.

AUTHORITY

There is no statutory or regulatory authority for this program. It has been established by a Cabinet Decison of October 9th, 1980 (418-80RD(C)).

DESCRIPTION

Experience has shown that emergency planning is most effective when the responsibilities, resources and aspirations of all orders of government are merged through cooperative planning. In October 1980, in the course of establishing the federal policy on emergencies, the Cabinet directed the establishment of a "Joint Emergency Planning Program" (JEPP) to be funded initially at a level of $6 million per annum. It is the key instrument of the federal government for promoting federal/provincial cooperation. Under this program the federal government shares with the provinces and territories the costs of undertaking approved emergency preparedness projects. It is administered by Emergency Planning Canada and takes the form of grants to federally approved projects. JEPP replaced a program which had been in effect since the early 1960s through which annual financial grants were provided directly to provinces and territories.

Project proposals must conform to terms and conditions prescribed by Treasury Board; have a clear objective which supports national priorities aimed at enhancing the national emergency response capability; have an agreed identified beginning and end with measurable points as appropriate; provide recognition of the federal involvement; and include a provincial commitment to the project in funds or in kind.

Among the key factors taken into account in consideration of project proposals are the following:

- a. current national priorities for emergency preparedness;
- b. the perceived need for and relevance to national priorities of the proposed project;
- c. the degree to which the project is considered to enhance the overall national emergency response capability and contribute to a cooperative approach to emergency planning generally;
- d. the level of emergency preparedness in the province concerned; and
- e. the relative ability of the province to meet its emergency planning need.

There is no set formula or ratio for sharing of project costs. The ratio and maximum dollar amount of the federal contribution determined during the acceptance process are based on the factors presented above.

JEPP project proposals are submitted by provinces or territories to the Regional Director, Emergency Planning Canada. If the regional director is satisfied that the proposal meets the terms and conditions and other criteria as set out in the JEPP manual, it will be forwarded to the Director General, Operations, at EPC Headquarters with a recommendation for its acceptance, its rejection or its acceptance with amendments. Each project proposal is then considered by the EPC Senior Staff Committee. If a project is accepted, the Senior Staff Committee determines the maximum amount of federal money from the JEPP fund to be allocated to the project. Funds are allocated from an annual budget of approximately $6 million and are taken from the A-Base budget of EPC. The regional director monitors implementation of the project and must be satisfied that the project has been completed, or a predetermined progress point reached, before he/she recommends acceptance of a provincial/territorial request for payment. On long-term projects, periodic audits by the Audit Services Bureau of DSS may be carried out.

As stated earlier, each project is required to have an identifiable beginning and end and measurable progress points. Payments from the JEPP fund are made to provinces/territories only when these progress points have been reached and/or project completed. Payment is made in the form of a cheque payable to the provincial/territorial treasurer.

Many of the projects involve the purchase of needed communications and emergency response equipment to enhance provincial and municipal emergency operations capability. A significant number aim at improving emergency preparedness through the development and conduct of training programs on a variety of emergency-related subjects.

Through Memoranda of Understanding on Emergency Planning (MOUs), six provinces and the two territories have agreed with the federal government to negotiate multi-year preparedness projects under JEPP, to conduct training and public information programs that support each other's emergency preparedness aims, to share human and material resources in emergency situations and for each to provide a "focal point" for liaison on emergency planning matters.

In addition to JEPP and the MOUs, and as a complement to them, to further facilitate and regularize intergovernmental emergency planning matters, EPC organizes an annual conference of senior federal, provincial and territorial emergency planning officials thereby providing a high-level forum for discussion of policy, planning and operational questions of mutual concern. This conference has led to the creation of two federal/provincial task forces, one dealing with training of on-scene commanders and the other on wartime planning and concepts of operations. In addition, EPC has undertaken to develop a strong regional component of its operations. The agency maintains a regional office manned by a regional director and a small support staff in each provincial capital to provide a point of contact for ongoing liaison on emergency planning matters. Through their daily contact with provincial and territorial emergency planning officials, these regional directors facilitate the administration of federal emergency planning programs, stimulate provincial participation in various emergency preparedness activities and ensure that federal emergency planning initiatives mesh with those being undertaken at the provincial level.

EXPENDITURES

Financial

	83/84 Actual	**84/85 Actual**	**85/86 Forecast**
Expenditures-grants	$3,071,022	5,582,847	6,338,000

Distribution of Payments

	83/84	84/85
British Columbia	$ 13,861.00	$ 24,711.00
Alberta	Nil	325,000.00
Northwest Territories	26,389.00	57,649.55
Yukon Territory	Nil	53,571.75
Saskatchewan	18,152.68	125,263.52
Manitoba	264,987.14	483,770.57
Ontario	622,063.64	1,375,313.33
Quebec	1,611,549.21	1,249,010.00
New Brunswick	346,393.33	1,806,253.00
Nova Scotia	105,181.40	18,265.60
Prince Edward Island	43,818.00	30,606.00
Newfoundland	18,627.48	33,433.00
TOTAL	$3,071,022.88	$5,582,847.32

There are no PYs devoted exclusively to this program. All senior staff members of EPC are involved in the decision as to whether a specific project proposal should be accepted. The bulk of administrative work associated with the program is done by the 10 regional directors.

BENEFICIARIES

Provincial and territorial governments and, ultimately, members of the public in general.

OBSERVATIONS

This is a closed-ended program. It is also a small scale one with a maximum annual allotment of $6 million. The cost-sharing formula is flexible; the level of federal funding being determined by the importance of the project to national priorities.

It is well received by most provinces and territories; interest and participation grows every year. Most provinces, with the exception of British Columbia, use this program or plan to do so in the future. The federal contribution is acknowledged and is also well reported in the media.

It is directed at broad areas of national as well as local needs and serves to put into place a basic human, physical and procedural infrastructure to cope with both wartime and peacetime emergency. The scope and nature of projects undertaken varies considerably from province to province.

It is considered to have had a significant impact on improving the standard and level of emergency response capability. In many areas, it has served as a catalyst to the development of plans and preparedness. It has also allowed several provinces to acquire a capital infrastructure for emergency planning and preparedness which they would be unable or unwilling to finance on their own. In addition to their share of costs, provinces are committed to the maintenance and operation of these facilities.

With one exception, this program is perceived as a complement to, rather than a substitute for provincial and municipal emergency planning and preparedness. It serves to increase their effectiveness through acquisition of needed capital equipment, development of plans, development and training of staff and volunteers and development of exercises to test these plans.

While this program is having some success in terms of improving the standards of emergency preparedness across the country, disparities in the level of preparedness between provinces still exist. Some important national needs still have to be met such as, for example, communication systems, warning systems, shelters, training of a task force, etc.

The recent introduction of joint five-year planning through the Memoranda of Understanding signed with six provinces and two territories is seen as providing a greater degree of stability for provinces in the development of appropriate projects. The experience of the 1960s and 1970s, when federal direction and financing were perceived as volatile, had left a legacy of caution and hesitancy with respect to involvement in joint planning. While the federal/provincial climate in this area has improved considerably since 1981, there remains a certain anxiety about the continued existence of this program, in view of the fact that it has no statutory basis. Another factor of concern for less well-off provinces is the fear that the five-year planning could lead to a per capita allocation of funds which would serve them poorly given their small populations, low tax bases and their greater proportional needs.

If there were no joint planning or no federal cooperation with and involvement in emergency planning at the local and provincial level, the federal government would not be able to meet its constitutional and international obligations (NATO and NORAD) or would do so by duplicating existing and emerging provincial and municipal programs. This would be costly and would elicit a negative reaction from the provinces.

In the event of a major disaster, the federal government could well be blamed if it had not taken or was perceived not to have taken part in joint preparedness.

The approach of EPC with respect to JEPP, is reactive. It responds to provincial requests in broad areas of national responsibilities such as communications, training, and capital equipment. While the administration of approved projects is rigorous, the criteria for the selection of projects give considerable scope to provincial choice so that the ultimate project, while useful to the province or municipality, may not be of vital importance to national priorities. This approach may have been necessary to enlist provincial cooperation in the past. If, however, the government were to define a clear federal policy and federal role with respect to emergency planning and response, it would follow that this program should be more rigorously aligned to that role and better serve federal priorities.

ASSESSMENT

This program has been in existence for four years and, in the view of the study team, is progressively meeting its objective. It encourages and supports cooperation between the two levels of government in working toward a national capability to meet emergencies of all types with a reasonably uniform standard of emergency services. It is not perceived to duplicate or overlap with provincial programs. It is considered to be well administered, flexible and effective. Most provinces appear satisfied with it and the process of joint planning, although it is felt this process would be helped if the issue of respective jurisdictions and roles was clarified and, hence, federal priorities better affirmed. Most provinces want the program expanded.

OPTIONS

The study team recommends to the Task Force that the government consider the following:

1. Maintain the program, define national priorities more tightly and increase the program's funding level. The precise level of funding would be determined by the priority the government attaches to this area and the timeframe within which it wishes to achieve its goals.

2. Maintain the program in its present form and level of funding but tighten the criteria so as to prevent it from being used for normal programming and focus it more narrowly on national priorities.

DISASTER FINANCIAL ASSISTANCE ARRANGEMENTS
Emergency Planning Canada

OBJECTIVES

The objective of this program is to provide financial assistance to respond to and recuperate from major disasters where assistance is requested by a province, so that the cost of dealing with them does not place an undue burden on the provincial economy, or in situations where aspects of an emergency clearly fall within federal jurisdiction.

AUTHORITY

The Disaster Financial Assistance arrangements are administered by Emergency Planning Canada under guidelines approved by Cabinet.

DESCRIPTION

The costs of responding to and recuperating from a major emergency are frequently high. Casualties must be cared for and transported to hospital. Emergency food, clothing and shelter must be provided to those in need. Private properties must be repaired and public works restored to their pre-disaster condition. Debris and wreckage must be cleared away. Each of these requirements costs money and when all bills are added up, expenditures can run into the millions.

The initial responsibility for handling emergencies normally rests with those directly affected in the first instance (i.e. individual Canadians), but few emergencies can be effectively managed with private resources alone. Where governmental action is required, the responsibility normally passes first to the municipality affected, then to the province, then to the federal government. Since most emergencies can be handled with resources available at the provincial level, the burden of most disaster-related expenditures falls upon the provinces.

Since 1970, under the Disaster Financial Assistance Arrangements, the federal government has provided financial assistance to provincial governments in situations where the cost of dealing with a disaster would place an undue burden on the provincial economy. This program is administered by Emergency Planning Canada (EPC) through its regional offices and its national headquarters in Ottawa. The assistance takes the form of grants to the provinces and territories to reimburse a portion of the assistance they provide.

Federal financial assistance is subject to pre-established guidelines and applies to three broad phases of disasters:

a. the immediate disaster period for which eligible costs may include rescue, transport, emergency health arrangements and emergency feeding, clothing and transportation of persons, shelter and feeding for livestock, measures to reduce the extent of damage, emergency provision of essential community services, equipment, material and labour for protective works and individual protection and that of publicly owned institutions and utilities, provision of emergency medical care to casualties of the disaster or resulting epidemic, special security measures, special communications facilities, emergency control headquarters, and special registration and inquiry services;

b. post-disaster assistance for individuals for which eligible costs may include restoration or replacement of or repairs to normally occupied dwellings used entirely for living accommodation or partly for living accommodation and the earning of livelihood; restoration replacement or repairs to chattels, furnishings, clothing of an essential nature; assistance in restoration of small businesses where the owner's livelihood has been destroyed; and costs of damage inspection and appraisal and administrative assistance excluding those incurred by permanent staff of government departments; and

c. post-disaster assistance in the public sector for which eligible costs may include clearance of debris and wreckage; protective health and sanitation facilities; repairs to pre-disaster condition of streets, roads, bridges, wharfs and docks; repairs to dykes, levees, and drainage facilities; repairs to public buildings and their related equipment; repairs to publicly-owned sewer and water facilities; and costs of inspection and appraisal.

Categories of Eligible Costs

The following are not eligible for cost-sharing: projects designed to reduce vulnerability in the event of recurrence of a disaster or to assist the post-disaster economy of an area or community as these are part of normal intergovernmental arrangements; post-disaster assistance by government to large businesses and industry whose continued operation is vital to the economy of a community, though there can be exceptions.

Eligible costs mean net incurred provincial expenditures eligible for sharing. Not considered eligible costs are:

a. any damage for which costs could be recovered through insurance or by law;
b. costs for which provisions are made in whole or in part under any other government program;
c. damages to property or facilities for which assistance was previously made available to prevent such damage;
d. damages which are an ordinary or normal risk of trade, calling or enterprise;
e. costs incurred for the restoration or rehabilitation which cannot be considered essential to the restoration of an individual to his home or livelihood or the reconstruction of essential community services;
f. costs incurred for the restoration of property owned by large businesses and industries;
g. costs which can be considered normal operating expenses of the government or agency concerned, including maintenance budgets; and
h. provincial retail and similar taxes.

Description of Arrangements

"Eligible costs" refer to expenditures incurred by a province in responding to a disaster in accordance with the federal guidelines. There must be a joint appraisal of private and public sector damages. Submission of provincial requests for assistance must be certified by the provincial auditor. DSS Audit Services Bureau is tasked with the federal audit.

The definition of financial hardship on a province is implied in the established cost-sharing formula as follows:

Per Capita Eligible Cost	**Federal Share**	**Provincial Share**
$0 to $1	0%	100%
$1 to $3	50%	50%
$3 to $5	75%	25%
$5 plus	90%	10%

Payments And Funding

Because of the nonrecurring nature of such assistance and each case being a special one, no funds are budgeted in advance. Individual submissions are made to Treasury Board and the assistance takes the form of ex gratia payments.

EXPENDITURES

Value by province	**83/84**	**84/85**
British Columbia	$1,537,970	$2,328,760
Alberta	NIL	NIL
Northwest Territories	NIL	46,278
Yukon Territory	NIL	NIL
Saskatchewan	NIL	NIL
Manitoba	2,646,740	623,864
Ontario	NIL	NIL
Quebec	NIL	NIL
New Brunswick	NIL	NIL
Nova Scotia	NIL	NIL
Prince Edward Island	1,340,290	NIL
Newfoundland	NIL	3,250,000
TOTAL	$5,525,000	$6,248,902

In total, the federal government has contributed approximately $90 million since the establishment of this program in 1970.

There are no specific person-years assigned to this program. EPC staff assume responsibility for its administration as the need arises.

BENEFICIARIES

Individuals, municipalities and provincial governments who have suffered losses through disasters.

OBSERVATIONS

This is the only federal program to deal with major disasters and to provide assistance. It appears to be tightly administered while retaining some flexibility to cope with the "extraordinary" and very specific cases. In keeping with the nature of the program, no funds are budgeted on an annual basis. Each request is treated as an individual case and Treasury Board has to approve the request and authorize an ex gratia payment. In the view of the study team, this program therefore appears to be sound from an administrative point of view.

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